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No. 12322

United States
Court of Appeals
For the Ninth Circuit.

COMPANIA NAVIERA LIMITADA, a Corporation, Claimant of the Motor Tanker "URANIA," Her Engines, Tackle, Apparel, Furniture and Equipment,

Appellant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, Co-partners doing business under the name and style of Commercial Ship Repair,

Appellee.

Apostles on Appeal
In Four Volumes
Volume I
(Pages 1 to 438)

Appeal from the United States District Court Western District of Washington, Northern Division.

FILED
JAN 4 - 1950

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

PAUL P. O'BRIEN, CLERK

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COMPANIA NAVIERA LIMITADA, a Corporation, Claimant of the Motor Tanker "URANIA," Her Engines, Tackle, Apparel, Furniture and Equipment,

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NAME AND ADDRESSES OF ATTORNEYS

MERRITT, SUMMERS & BUCEY,

LANE SUMMERS,

CHARLES B. HOWARD,

Proctors for Claimant and Cross-Libelant.

Central Building,

Seattle, Washington.

TODD, HOKANSON & WHITE,

RUSSELL V. HOKANSON,

RICHARD S. WHITE,

Proctors for Libelants and Cross-Respondents.

682 Dexter Horton Building,

Seattle, Washington.

In the District Court of the United States for the Western District of Washington, Northern Division

In Admiralty No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-partners, doing business under the assumed name and style of Commercial Ship Repair,

Libelants,

vs.

THE MOTOR TANKER "URANIA," he engines, tackle, apparel, furniture, and equipment,

Respondent.

LIBEL

To the Honorable Judges of the Above Entitled Court:

The libel of the above named libelants against the above named respondent and against all persons intervening for their interest therein in a cause of contract civil and maritime, alleges:

I.

That at all times herein mentioned, the libelants, E. A. Black and J. J. Featherstone, were and now are co-partners doing business under the assumed name and style of Commercial Ship Repair, with an office and place of business in the Port of Winslow, State of Washington.

II.

That the respondent motor tanker Urania is now

lying afloat in the navigable waters of Puget Sound and within the jurisdiction of this Honorable Court.

III.

On information and belief, that at all times herein mentioned, Compania Navier Limitada Panama, a corporation organized and existing under the laws of the Republic of Panama, was and now is the owner of said vessel.

IV.

That between August 1st, 1948 and October 12th, 1948, the libelants furnished to said motor tanker Urania at the instance and request of the Master and owner of said vessel, material, labor and services for the repair, alteration and renewal of said vessel of the reasonable and agreed value of $89,-366.75.

V.

That of the aforesaid sum the*ir* remains a balance now due and owing in the sum of $64,366.75, no part of which has been paid, although demand has been made therefor.

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelants pray that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said motor tanker Urania, her engines, tackle, apparel, furniture, and

equipment; and that persons claiming any right, title or interest in said vessel may be cited to appear and answer upon oath all and singular the matters aforesaid, and that said vessel may be condemned and sold to pay the amount due to libelants, with interest and costs, and that libelants may have such other and further relief as in law and justice they may be entitled to receive.

LANGLIE & TODD,
/s/ THOMAS TODD,
Proctors for Libelants.

[Endorsed]: Filed Oct. 13, 1948.

United States of America,
Western District of Washington—ss.

Thomas Todd, being first duly sworn, upon oath deposes and says: That he is one of the proctors for libelants in the above action and that he makes this verification for and on behalf of said libelants, being authorized so to do; that he has read the within and foregoing libel, knows the contents thereof and believes the same to be true.

/s/ THOMAS TODD.

Subscribed and Sworn to before me this 13th day of October, 1948.

[Seal] /s/ G. L. FLYNN,
Notary Public in and for the State of Washington, residing in Seattle.

[Title of District Court and Cause.]

STIPULATION FOR COSTS

Know All Men By These Presents:

That the undersigned principals and the undersigned surety are held and firmly bound unto the United States of America in the penal sum of Two Hundred Fifty Dollars ($250.00) lawful money of the United States, for the payment thereof to the benefit of whom it may concern; the said principals and the said surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13th day of October, 1948.

The conditions of this obligation are such that

Whereas, the above bounden principals are filing in this court and cause their libel against the respondent, The Motor Tanker Urania, her engines, tackle, apparel, furniture, and equipment,

Now, Therefore, if the above bounden principals shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or by any interlocutory order in the progress of the suit, or on appeal by any appellate court, then

this obligation to be void, otherwise to remain in full force and effect.

E. A. BLACK and
J. J. FEATHERSTONE,
Co-partners, doing business under the assumed name and style of Commercial Ship Repair,
By LANGLIE & TODD,
/s/ THOMAS TODD,
Its Proctors.
Principals.
FIREMAN'S FUND
INDEMNITY COMPANY,
[Seal] By /s/ W. S. BEEKS,
Its Attorney-in-Fact.
Surety.

[Endorsed: Filed Oct. 13, 1948.

AFFIDAVIT OF PUBLICATION

State of Washington,
County of King—ss.

M. E. Brown, being first duly sworn, on oath deposes and says that he is the business manager and one of the publishers of The Daily Journal of Commerce, a daily newspaper. That said newspaper is a legal newspaper and it is now and has been for more than six months prior to the date of the publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now

and during all of said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the said Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of said King County.

That the annexed is a true copy of Notice of U. S. Marshal, as it was published in the regular issue (and not in supplement form) of said newspaper on the 15th day of October, 1948, and that said newspaper was regularly distributed to its subscribers during all of said period.

/s/ M. E. BROWN.

Subscribed and sworn to before me this 15th day of October, 1948.

[Seal] /s/ MARILYN BOORAS,
Notary Public in and for the State of Washington, residing at Seattle.

NOTICE

Whereas, on the 13th day of October, 1948, E. A. Black and J. J. Featherstone, co-partners doing business under the assumed name and style of Commercial Ship Repair, Libelants, by Langlie & Todd, of Seattle, Washington, Proctors for Libelant, filed a libel in the District Court of the United States for the Western District of Washington, against the Motor Tanker "Urania," her engines, tackle, apparel, furniture and equipment in a cause of action civil and maritime, numbered 15266, for material, labor and services for repair of vessel in the sum

of $64,366.75. And whereas, by virtue of process in due form of law, to me directed, I have attached and retain the same in my custody. Notice is hereby given to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said court, to be held at Seattle, in the Western District of Washington, on the 2nd day of November, A.D. 1948, at ten o'clock in the forenoon of the same day, if that day shall be a day of Jurisdiction, otherwise on the next day of Jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. J. S. Denise, United States Marshal. (5603-M)

[Endorsed]: Filed Oct. 15, 1948.

[Title of District Court and Cause.]

CLAIM OF OWNERSHIP

Compania Naviera Limitada, of Panama, a corporation, as sole owner of the Motor Tanker "Urania", her engines, tackle, apparel, furniture and equipment, intervening for its interest as such owner, appears before the above entitled Court and claims said respondent vessel, and prays that it be permitted to defend accordingly, and that said Court

will decree restitution thereof and otherwise administer right and justice in the premises.

COMPANIA NAVIERA
LIMITADA, OF PANAMA,
a corporation,
By /s/ ANDREAS BEIS,
Its Agent, and Master of Respondent Motor Tanker "Urania."

Copy received Oct. 15, 1948.

United States of America,
State of Washington,
County of King—ss.

Andreas Beis, being first duly sworn, upon oath deposes and says:

That he is the Master of the Motor Tanker "Urania" and as such authorized to make the foregoing Claim of Ownership to said vessel in behalf of her owner, Compania Naviera Limitada, of Panama, a corporation, which at all times material was, and now is, the true and bona fide owner of said respondent Motor Tanker "Urania," her engines, tackle, apparel, furniture and equipment, and as such owner entitled to the sole possession thereof.

/s/ ANDREAS BEIS.

Subscribed and sworn to before me this 15th day of October, 1948.

/s/ LANE SUMMERS,
Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed Oct. 16, 1948.

[Title of District Court and Cause.]

RELEASE AND COST BOND

Know All Persons By These Presents:

That we, Compania Naviera Limitada, of Panama, a corporation, as Principal, and National Surety Corporation, a corporation authorized to transact a surety business within the State of Washington, as Surety, are held and firmly bound unto the United States Marshal of the above entitled district, for the use and benefit of whom it may concern, in the full sum of Eighty Thousand Dollars ($80,000.00), to be paid to such Marshal or his successor, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and delivered this 15th day of October, 1948.

Whereas, libel in the above entitled cause has heretofore been filed in the above entitled court by libelants above named against the respondent vessel above named, for reasons in said libel alleged;

Whereas, said respondent vessel now lies seized and attached in the custody of said Marshal by virtue of process in rem issued upon said libel; and

Whereas, said Principal is filing in the above entitled cause its Claim of Ownership to said respondent vessel, and is applying for release thereof in accordance with the admiralty rules and practice of the above entitled Court;

Now, Therefore, the condition of this obligation is such that if said Principal shall abide by and answer final decree in the above entitled cause, and pay the money awarded thereby, (however, not exceeding said sum) and also shall pay all costs and expenses which shall be awarded by final decree of said Court or by any interlocutory order in the progress of said cause, or by any appellate court in case of appeal, then this obligation shall be void; otherwise it shall continue in full effect.

COMPANIA NAVIERA
LIMITADA, OF PANAMA,
a corporation,
By /s/ ANDREAS BEIS,
Its Agent, and Master of Respondent Motor Tanker "Urania."

Principal.

NATIONAL SURETY
CORPORATION,
By /s/ R. E. MOLONEY,
Its Attorney-in-Fact.
Surety.

The foregoing bond is hereby approved, and consent is hereby given that the vessel be released forthwith.

LANGLIE & TODD,
Proctors for Libelants.

[Endorsed]: Filed Oct. 18, 1948.

District Court of the United States
Western District of Washington

No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-partners, d/b/a Commercial Ship Repair,
Libelants,

vs.

MOTOR TANKER "URANIA," etc.,
Respondent.

MONITION AND ATTACHMENT

The President of the United States of America
To the Marshal of the United States for the Western District of Washington, Greeting:

Whereas, a Libel hath been filed in the United States District Court for the Western District of Washington, on the 13th day of October, in the year of our Lord one thousand nine hundred and 48, by E. A. Black and J. J. Featherstone, co-partners, doing business under the assumed name and style of Commercial Ship Repair, Libelants, vs. The Motor Tanker "Urania," her engines, tackle, apparel, furniture, and equipment, Respondent for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said Court in that behalf be made, and that all persons interested in the said Motor Tanker "Urania" or vessel, her tackle, etc., may be cited in general and special to answer the premises, and

all proceedings being had that the said Motor Tanker "Urania" or vessel, her tackle, etc., may for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libellant.

You Are Hereby Commanded to attach the said Motor Tanker "Urania" or vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held at Seattle, in the Western District of Washington, on the 2nd day of November, A.D. 1948, at 10 o'clock in the forenoon of the same day, if that day shall be a day of Jurisdiction, otherwise on the next day of Jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness, the Hon. John C. Bowen, Judge of said Court, at the City of Seattle, in the Western District of Washington, this 13th day of October in the year of our Lord one thousand nine hundred and forty-eight and of our independence the one hundred and seventy-third.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ TRUMAN EGGER,
Deputy Clerk.

Material, labor, and services for repair of vessel, $64,366.75.

LANGLIE & TODD.
Proctors for Libellant.

MARSHAL'S RETURN

I hereby certify and return that in obedience to the attached Monition and Attachment I attached the therein described Motor Tanker "Urania," her engines, tackle, apparel, furniture and equipment on October 13, 1948 at Winslow, Washington and have the same in my custody. I have given due notice to all persons claiming the same, or knowing or having anything to say why same should not be condemned and sold pursuant to the prayer of the Libel, that they be and appear before this Court to be held at Seattle in the Western District of Washington on the 2nd day of November, 1948, by causing a Notice to be published in The Daily Journal of Commerce, Seattle, Washington, and posting like Notice on the seized Motor Tanker "Urania."

A copy of the Monition and Attachment, together with copy of Libel was served on Andreas Beis, Skipper of the Motor Tanker "Urania."

J. S. DENISE,
United States Marshal.
By /s/ EDWARD C. SCULLY,
Deputy.

[Endorsed]: Filed Oct. 19, 1948.

[Title of District Court and Cause.]

ANSWER

The Answer of claimant above named to libel of libelants above named in the above entitled cause of contract, civil and maritime, admits and denies as follows:

I.

As to Article I, the claimant admits the allegations thereof.

II.

As to Article II, the claimant admits the allegations thereof.

III.

As to Article III, the claimant admits that it is the owner of the respondent vessel, and that it is a corporation of the Republic of Panama.

IV.

As to Article IV, the claimant admits that between the 1st of August and the 12th of October, in 1948, libelants furnished to the respondent vessel, at the instance of the master and/or the owner, certain labor and materials for repair or alteration thereof; but the claimant denies that such labor and materials were of the reasonable and agreed value of $89,366.75, the actual value being in an amount substantially less, to be determined by proofs in the above entitled cause.

V.

As to Article V, the claimant denies that a balance in the sum of $64,366.75 is due and owing to the libelants, but admits that no part of said sum has been paid by the claimant.

VI.

As to Article VI, the claimant denies the allegations thereof, excepting only the jurisdictional allegation.

Wherefore, having fully answered, the claimant prays that said libel be dismissed with costs, and that pending the above entitled cause the claimant have such interim relief as may be just and proper.

MERRITT, SUMMERS &
BUCEY,
/s/ LANE SUMMERS,
Proctors for Claimant.

[Endorsed]: Filed Nov. 16, 1948.

United States of America,
State of Washington,
County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is a member of the firm of Merritt, Summers & Bucey and as such one of the proctors of record for claimant above named, which is a for-

eign corporation having no officer or agent within the jurisdiction of the above entitled court. That he has prepared the foregoing Answer on information and belief; that he is authorized to verify said Answer in behalf of said claimant; that he has read the same, knows the contents thereof, and believes the same to be true.

/s/ LANE SUMMERS.

Subscribed and sworn to before me this 15th day of November, 1948.

[Seal] /s/ CHARLES B. HOWARD,
Notary Public in and for the State of Washington, residing at Seattle.

Receipt of copy acknowledged.

In the District Court of the United States for the Western District of Washington, Northern Division

In Admiralty No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-partners, doing business under the assumed name and style of Commercial Ship Repair,

Libelants,

vs.

THE MOTOR TANKER "URANIA," her engines, tackle, apparel, furniture and equipment,

Respondent,

COMPANIA NAVIERA LIMITADA, a corporation,

Claimant.

COMPANIA NAVIERA LIMITADA, a corporation,

Cross-Libelant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, co-partners, doing business under the assumed name and style of Commercial Ship Repair,

Cross-Respondents.

CROSS-LIBEL

The cross-libel of Compania Naviera Limitada, a corporation, cross-libelant above named, against E. A. Black and J. J. Featherstone, doing business under the firm name of Commercial Ship Repair,

cross-respondents above named, in a cause of repairs and damages, civil and maritime, alleges:

I.

That cross-libelant Compania Naviera Limitada at all times material was and is a Panamanian corporation, and the owner of the motor tanker "Urania."

II.

That according to cross-libelant's information and belief, cross-respondents E. A. Black and J. J. Featherstone at all times material were and are co-partners, doing business under the firm name of Commercial Ship Repair, with a yard at or near Winslow, Washington.

III.

That during the period beginning on or about the 1st of August and ending on or about the 14th of October, in 1948, the "Urania" was at the yard of cross-respondents, under agreement for faithful performance by them of certain repairs, renewals, alterations and additions, to be completed in the period of eighteen working days. That cross-respondents failed in such performance by unreasonably consuming extended time and by negligently furnishing to the "Urania" inefficient services, unreliable labor, and defective materials, with consequences as follows: (a) certain tools belonging to the vessel were taken therefrom and not returned thereto; (b) work and materials as specified were not supplied; (c) the departure of the vessel from said yard was unduly delayed; (d) the first voyage

of the vessel after such departure was interrupted by breakdowns, necessitating deviation and towage to port of refuge; (e) further and corrective repairs were required by the vessel; (f) additional loss of time was incurred by the vessel.

IV.

That in continued consequence of said malperformance by cross-respondents of their obligations to cross-libelant respecting such repairs, renewals, alterations and additions on the vessel, cross-libelant has been subjected to losses and expenses which have not been definitely ascertained as to exact amount, but have been presently estimated as follows:

(1)	Repairs to Clayton boiler and generator at Long Beach	$ 678.86
(2)	Removal of ammunition bulkhead not effected	275.00
(3)	Expense incurred during delay at Winslow, Washington, (16 days at $246 per day)	3936.00
(4)	Loss of profits during delay at Winslow, Washington, (16 days at $250 per day)	4000.00
(5)	Telemotor repairs at Port Angeles, Washington, (including 2 men, one surveyor, and air transportation)	262.51
(6)	Deviation to Port Angeles, Washington, for telemotor repairs	310.00
(7)	Towage after breakdown from Manzanillo, Mexico, to San Pedro, California	4286.00

(8)	Engine repairs at Long Beach, California	4475.00
(9)	Miscellaneous corrective repairs at Long Beach, California	3214.00
(10)	Corrective cleaning of tanks at Long Beach, California	2157.00 CBH
(11)	Additional fuel consumed on account of deviation and delay for repairs, and resupplied at San Pedro, California.	974.00
(12)	Disbursements (agency) at Manzanillo	969.00
(13)	Disbursements (agency) at Los Angeles	1911.00
(14)	Expenses of vessel during repairs at Long Beach, California	7252.00
(15)	Loss of profits during corrective repairs (28 days at $250 per day)	7000.00

V.

That likewise in continued consequence of said malperformance by cross-respondents, damages in Illegible initial $39,543.37 C.B.H. the presently estimated total of $41,389.51 have been suffered by cross-libelant, for which it is entitled to reimbursement from the cross-respondents.

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the above entitled court.

Wherefore, cross-libelant prays:

(1) That process in due form of law according

to the rules and practice in cases of admiralty and maritime jurisdiction issue against said cross-respondents in personam, requiring them, and each of them, to appear and answer the foregoing cross-libel;

(2) That cross-libelant having been required to furnish security to release the respondent motor tanker "Urania" from process in rem issued upon the original libel in the above entitled cause filed by cross-respondents as libelants, they be required to furnish security as contemplated by Admiralty Rule 50 in the sum of $52,000.00;

(3) That until such security shall have been so furnished, all proceedings upon the original libel in the above entitled cause be stayed;

(4) That by decree of the above entitled court judgment be granted against cross-respondents and in favor of cross-libelant for its damages as proved, together with interest thereon and costs to be taxed;

(5) That cross-libelant have such other and additional relief as may seem to the Court just and proper.

MERRITT, SUMMERS &
BUCEY.
/s/ LANE SUMMERS,
Proctors for Cross-libelant.

United States of America,
State of Washington, County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is an attorney at law and a member of

the firm of Merritt, Summers & Bucey, and as such one of the proctors of record for cross-libelant above named, a foreign corporation; that on information supplied and authority granted by said cross-libelant he has prepared the foregoing cross-libel, the contents of which he has read and believes to be true.

/s/ LANE SUMMERS.

Subscribed and sworn to before me this 26th day of January, 1949.

[Seal] /s/ CHARLES B. HOWARD,
Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed Jan. 26, 1949.

[Title of District Court and Cause.]

INTERROGATORIES OF LIBELANTS-CROSS-RESPONDENTS

Come now the Libelants-Cross-respondents above named and, without waiving their exceptions to the cross-libel on file herein, propound the following interrogatories to be answered under oath by Claimant-Cross-libelant corporation, in accordance with the rules and practices in admiralty, by any officer thereof competent to testify in its behalf:

INTERROGATORY No. 1

Was Demitri Antippas an officer and/or director of Compania Naviera Limitada between August 1, 1948, and October 15, 1948?

INTERROGATORY No. 2

If the answer to Interrogatory No. 1 is "yes," state what office or offices he held.

INTERROGATORY No. 3

State whether at any time between August 1, 1948, and October 13, 1948, Harry F. Williams was employed by claimant corporation to represent it in connection with the repair and/or alteration and/or renewal of the motor tanker "Urania."

INTERROGATORY No. 4

Referring to Article III of the cross-libel filed herein, was the agreement that the work would be completed in a period of 18 working days oral or written?

(a) If the agreement was oral, give the date, place and names of the persons who made the agreement.

(b) If the agreement was written, give the date of the instrument and the names of the persons by whom the same was signed.

(c) What were the commencement and completion dates provided for under the terms of the alleged agreement?

INTERROGATORY No. 5

Referring to Article III of the cross-libel, state what extension or extensions of time were granted to cross-respondents, giving dates on which exten-

sion or extensions were granted, and dates covered by said extension or extensions of time.

(a) Were the extension or extensions of time made orally or in writing?

(b) If oral, state the names of the persons between whom the agreement was made.

(c) If in writing, state the names of the persons signing said writing.

INTERROGATORY No. 6

Referring to Article III of the cross-libel, what services furnished to the "Urania" by cross-respondents were inefficient?

(a) In what respect were such services inefficient?

INTERROGATORY No. 7

Referring to Article III of the cross-libel, what labor furnished by cross-respondents to the "Urania" was unreliable?

(a) In what respect was such labor unreliable?

INTERROGATORY No. 8

Referring to Article III of the cross-libel, what materials furnished by cross-respondents to the "Urania" were defective?

(a) In what respect were such materials defective?

INTERROGATORY No. 9

Referring to Article IV, sub-paragraph (1), of the cross-libel, what tools were taken from the vessel and not returned thereto?

(a) Who took said tools from the vessel?

(b) What were the circumstances of the removal of the tools?

INTERROGATORY No. 10

Referring to sub-paragraph (3) of Article IV of the cross-libel, state the commencing and terminating dates of the alleged 16-day delay for which damages by way of expenses are sought.

(a) Itemize all expenses incurred by reason of the alleged 16-day delay.

(b) To whom did cross-libelant become obligated for each of the expenses itemized?

INTERROGATORY No. 11

Referring to sub-paragraph (4) of Article IV of the cross-libel, state the basis on which the alleged loss of profits is calculated.

(a) If the said loss of profits is based in whole or in part on contract, or offer of contract, state whether such contract, or offer of contract, is oral or written.

(b) If oral, state the names of the parties to the agreement, when and where the same was made, and the date for the commencement of performance and expected completion thereof.

(c) If written, the date of and the names of the parties to such agreement, and the date for the commencement of performance and expected completion thereof.

INTERROGATORY No. 12

Referring to sub-paragraph (5) of Article IV of the cross-libel:

(a) Describe the defects in the telemotor requiring repairs.

(b) What repairs were made to the same?

(c) By whom were the repairs made?

(d) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel necessitated repairs to the telemotor.

INTERROGATORY No. 13

Referring to sub-paragraph (6) of Article IV of cross-libel, what items do the alleged damages for deviation include?

INTERROGATORY No. 14

Referring to Article IV of cross-libel, state the scheduled ports of call of "Urania" after departure from Puget Sound.

(a) State the purpose of putting in at each scheduled port of call and the scheduled time of arrival thereat and departure therefrom.

(b) State what cargoes the "Urania" was scheduled to carry, the ports at which each such cargo was to be loaded and the ports at which such cargoes were to be delivered.

(c) At what port or ports, if any, did the

"Urania" call after October 15, 1948, and prior to the alleged breakdown at or near Manzanillo, Mexico?

INTERROGATORY No. 15

Referring to sub-paragraph (7) of Article IV of cross-libel:

(a) State the date of the breakdown at Manzanillo, Mexico.

(b) Describe the defect or defects which caused the vessel to break down.

(c) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel caused the breakdown of the "Urania" at or near Manzanillo.

(d) State whether the "Urania" was able to proceed under her own power after breakdown.

(e) State whether breakdown occurred in port or at sea, and if at sea, the vessel's position when breakdown occurred.

(f) State the name of the vessel or vessels which towed "Urania" from Manzanillo to San Pedro.

(g) State date of departure from Manzanillo and date of arrival at San Pedro.

INTERROGATORY No. 16

Referring to sub-paragraph (8) of Article IV of cross-libel:

(a) State what engine or engines were repaired.

(b) State the parts thereof which were repaired.

(c) State the parts thereof which were replaced, if any.

(d) Describe the defects in the engine or engines which required such repairs or replacements.

(e) State how much time was actually consumed in effecting such repairs.

(f) Give the commencement date and completion date of the engine repair work.

(g) State who made the engine repairs to the vessel at Long Beach, California, giving the name of the company or individuals who effected the same.

(h) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel necessitated engine repairs to be made.

(i) Was a survey report made to claimant-cross-libelant corporation by the American Bureau of Shipping covering engine repairs at Long Beach, California?

(j) Was a survey report made to claimant-cross-libelant corporation by any underwriters covering engine repairs at Long Beach, California, and, if so, by whom?

INTERROGATORY No. 17

Referring to sub-paragraph (9) of Article IV of the cross-libel:

(a) State what "miscellaneous" corrective repairs were made to the vessel at Long Beach, California.

(b) State how much time was actually consumed in making said "miscellaneous" corrective repairs.

(c) Give the commencement and completion date of said "miscellaneous" corrective repairs.

(d) Who made the "miscellaneous" corrective repairs, giving the name of the company or individuals who effected the same.

(e) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel necessitated the "miscellaneous" corrective repairs.

INTERROGATORY No. 18

Referring to sub-paragraph (10) of Article IV of the cross-libel:

(a) State what tanks of the vessel were correctively cleaned at Long Beach, California, describing specifically the type and location of such tank or tanks on the vessel in each case.

(b) Who effected the cleaning of said tanks?

(c) What condition existed in the tank or tanks requiring the same to be correctively cleaned?

(d) State with particularity what malperformance by cross-respondents of their obligations to cross-libelant respecting repairs, renewals, alterations and/or additions on the vessel necessitated the "corrective" cleaning of the tanks.

INTERROGATORY No. 19

Referring to sub-paragraph (11) of Article IV of the cross-libel:

(a) State how many extra miles were traveled by the vessel on account of the alleged deviation for repairs.

(b) How many gallons of fuel were consumed on account of such alleged deviation?

(c) Who furnished to the vessel the additional fuel alleged to have been resupplied at San Pedro?

INTERROGATORY No. 20

Referring to sub-paragraph (12) of Article IV of the cross-libel:

(a) Itemize the "agency" disbursements made at Manzanillo, giving the date or dates when each item was incurred.

(b) To whom were such disbursements made?

INTERROGATORY No. 21

Referring to sub-paragraph (13) of Article IV of the cross-libel:

(a) Itemize the "agency" disbursements made at Los Angeles, giving the date or dates when each item was incurred.

(b) To whom were the disbursements made at Los Angeles?

INTERROGATORY No. 22

Referring to sub-paragraph (14) of Article IV of the cross-libel:

(a) Itemize all expenses of vessel incurred during repairs at Long Beach.

(b) Give the dates between which expenses of the vessel were incurred at Long Beach.

(c) To whom did cross-libelant become obligated for each of the expenses itemized?

INTERROGATORY No. 23

Referring to sub-paragraph (15) of Article IV of the cross-libel:

(a) State the basis on which the alleged loss of profits is calculated.

(b) If the said loss of profits is based in whole or in part on contract or offer of contract, state whether such contract or offer of contract is oral or written.

(c) If oral, state the names of the parties to the agreement, when and where the same was made, and the date for the commencement of performance and expected completion thereof.

(d) If written, the date of and the name of the parties to such agreement, and the date for the commencement of performance and expected completion thereof.

(e) State when the 28-day period alleged in sub-paragraph (15) began and when it terminated.

Respectfully submitted,

TODD, HOKANSON & WHITE,

By /s/ RUSSELL V. HOKANSON,

Proctors for Libelants-Cross-Respondents, Commercial Ship Repair.

Copy Received Feb. 5, 1949.

[Endorsed]: Filed Feb. 5, 1949.

[Title of District Court and Cause.]

ANSWERS OF CROSS-LIBELANT TO INTERROGATORIES OF LIBELANTS-CROSS-RESPONDENTS.

Comes now the cross-libelant, by and through its proctors of record, Merritt, Summers & Bucey, and for answer to the interrogatories of the libelants-cross-respondents, which were served on February 5, 1949, furnishes the following information:

Interrogatory No. 1: Yes.

Interrogatory No. 2: Member of the Board of Directors.

Interrogatory No. 3: Yes.

Interrogatory No. 4: (a) Not applicable.

(b) The agreement was in writing, was dated August 4, 1948, and was signed "Commercial Ship Repair—E. A. Black, Co-owner."

(c) No dates were specified in the above instrument, but the vessel was actually delivered to the Winslow, Washington, yard of the Commercial Ship Repair at 1800 hours August 5, 1948.

Interrogatory No. 5: No extensions of time were granted to cross-respondents by cross-libelant.

Interrogatory No. 6: The performance of work by cross-respondents under contract specifications was done in such a manner that breakdown of the engines, malfunction of the machinery and equipment and correction of the various items enumerated in paragraph IV of the cross-libel proximately resulted, details of which will require extensive proof by cross-libelant at time of trial.

Interrogatory No. 7: See answer to Interrogatory No. 6.

Interrogatory No. 8: See answer to Interrogatory No. 6.

Interrogatory No. 9: The following tools were taken from the vessel and not returned:

6 hammers weighing from 1 lb. to 4 lbs.
1 hammer weighing 8 lbs.
4 screwdrivers ranging from 7″ to 12″
6 chisels
1 chisel, cross
5 punches
1 scissor 6 inches
1 scissor 12 inches
1 pincer 6 inches
1 pinces 7 inches
1 pincer with isolation, 6 inches
2 keys for electric drilling
1 hand vice 6 inches
1 compass, 12 inches
2 pincers (superpliers)
1 box containing complete set of tools, key locked
5 box wrenches
3 open end wrenches ¼-1½
1 cope chisel
3 flash lights
8 gauges
2 knives
4 drills

(a) The exact identity of persons taking the tools is unknown.

(b) The tools were taken from the vessel while it was at Winslow, Washington, yard of Commercial Ship Repair and during the period of time when employees of the cross-respondents were working aboard the vessel.

Interrogatory No. 10: Original contract work on the vessel was not completed until October 15, 1948, although cross-respondents commenced this work on the vessel on August 6, 1948. A total time of 51 working days, or 33 days in excess of the contract period, elapsed between commencement and termination of original contract repairs, or a total of 33 days in excess of the agreed period for completion of repairs. Of the excess of 33 days cross-libelant has made an allowance of 17 working days for the performance of additional work not specified by the original contract. This leaves 16 working days over and above the agreed contract time of 18 working days, for which cross-libelant makes claim for damages.

(a) The estimate of daily expense of $246.00 to the vessel as alleged in the libel has now been revised on the basis of actual experience and computations to an average daily expense of $268.00, itemized as follows:

Monthly wages	$4,176.01
Overtime—one month	602.20
Victualing—one month	921.60
Marine insurance—one month....	833.00
P. & I. insurance—one month.....	100.00
Depreciation—equivalent of.....	835.00

Deck and engine stores, but not including bunkers.....	600.00
	$8,067.81

or an average of $268.00 per day.

(b) To the persons enumerated in (a) above, for which supporting documents will be offered in evidence by cross-libelant at the time of trial.

Interrogatory No. 11: Loss of profits was calculated on the basis of actual experience in operation of the vessel.

(a) Written contract.

(b) Not applicable.

(c) Charter party dated December 13, 1948; Compania Naviera Limitada of Panama and the Coastwise Petroleum Company. Commencement date was December 15, 1948, and termination of contract December 24, 1948.

Interrogatory No. 12:

(a) The steering gear mechanism was oscillating from side to side as much as 60 degrees.

(b) A worn or partially broken wire, which caused the controller motor to hunt, was repaired.

(c) J. H. Woodside, a machinist, and Lester Short, an electrician from Commercial Ship Repair, performed the repairs, for which the vessel's agents were charged the sum of $177.16 by cross-respondents.

(d) Failure to satisfactorily perform Item 26 of contract specifications, resulting in breakdown of telemotor mechanism within a few hours of depart-

ure from cross-respondents' Winslow, Washington, repair yard.

Interrogatory No. 13: Vessel's running expenses, fuel consumed and expenses for putting in at Port Angeles, totalling $310.00.

Interrogatory No. 14: Upon departure Puget Sound vessel was en route in ballast to Cristobal, C. Z., subject to owner's orders as to further ports of call.

(a) Vessel had no scheduled ports of call on the West Coast United States or Central America, and in fact did not put in at any port prior to breakdown necessitating deviation to Manzanillo, Mexico.

(b) On initial voyage to Cristobal, C. Z., vessel was in ballast.

(c) None.

Interrogatory No. 15: (a) At sea, Lat. 18° 15″ north, Long. 104° 24″ west on October 26, 1948.

(b) Gear of vertical shaft thrust bearing and gear of vertical shaft drive on main engine galled.

(c) Terminals leading lube oil from special cylinder lubricator through cylinder and jacket water openings and into the rubbing surfaces of cylinders and liners were not tight. Heat exchangers dirty and leaking badly. Combination of above caused lube oil to emulcify and in turn caused gears to gall. Failure of cross-respondents to properly perform contract specifications and extra specifications on main engine work as will be shown in detail by evidence introduced at time of trial by cross-libelant.

(d) "Urania" proceeded under own power at reduced speed on reverse course toward Los Angeles until threat of complete breakdown caused master to again change course and make for nearest port, Manzanillo, where vessel arrived on October 28, 1948.

(e) See above. After temporary repairs were made at Manzanillo by service representative of main engine manufacturer who flew to Manzanillo, vessel departed under own power for Los Angeles to enable further repairs to be accomplished. Vessel sustained a complete breakdown at sea on November 5, 1948, necessitating request for salvage tug to assist "Urania" to port of Los Angeles.

(f) Tug "Pacific Retriever."

(g) Departed Manzanillo November 3, 1948. Arrived Los Angeles (San Pedro) November 11, 1948.

Interrogatory No. 16: (a) This item covers only repairs to main engine.

(b) Principal parts were replaced as shown below (c).

(c) Vertical shaft drive gear (2), vertical shaft lower gear (2), vertical shaft base bearing bushing, ball bearing (2), tubing, camshaft gear, vertical shaft gear, lower vertical shaft bearings (2 sets), filter elements (12), gaskets, pipe, fuel lines, valves, gauges, governor crosshead assembly, governor weight assembly and miscellaneous small parts.

(d) See answer to Interrogatory No. 15(b) and (c).

(e) One service engineer, 15 days.

One service engineer, 14 days.

One service engineer, 110 hours.

One service engineer, 61½ hours.

One principal service engineer, 3 days.

(f) At Manzanillo, October 31 to November 3, 1948. At Los Angeles (Long Beach) November 11 to November 17, 1948. At sea, with service engineer aboard, from November 17 to November 23, 1948, and also during period November 3 to November 10 at sea.

(g) The Union Diesel Engine Company.

(h) See answer to Interrogatory No. 15(b) and (c).

(i) Yes.

(j) No, not by any underwriters, but a report of survey was obtained from Lloyd's Agent, Captain Walter Gay, by Best and Co., Lloyd's Sub-Agents, Frank S. Dupuy & Son, George M. Dupuy, Surveyor.

Interrogatory No. 17: (a) Miscellaneous repairs included 18 items of specifications covering: light and water furnished, repair of diffuser motor in vegetable box, repair of bilge pumps, repair of leaks in sea suction, change connection of fuel pump suction, repair of telemotor system, service refrigerator system, overhaul and check cylinder heads on auxiliaries, furnish regulators, diaphragms, studs and pumps and miscellaneous material, install two new motors in Modine heater and 3 new fans, calibrate gauges, overhaul valves in air compressor and air bottle, check and adjust anchor windlass, repair wiring in stern light, remove, rewind and reinstall

grounded field coil in starboard generator, check and repair telephone system, alter exhaust line.

(b) Approximately 48 hours.

(c) November 15, 1948—commenced, November 17, 1948—completed.

(d) Craig Shipbuilding Co., Long Beach, California.

(e) Failure of cross-respondents to properly perform the contract and extra specifications relating to each of the items enumerated in subparagraph (a) above, as will be more fully disclosed by evidence presented by cross-libelant at time of trial.

Interrogatory No. 18: (a) Eight cargo tanks, Nos. 1, 2, 3, and 4, port and starboard.

(b) Martin Ship Service Co., Wilmington, California.

(c) A tight rust scale had been left on internal surfaces tanks with some loose powdery rust on tank bottoms after cleaning by cross-respondents at Winslow, Washington. Small areas on bulkheads showed soft black oil residue. More highly oxidized black oil residue was found next to most seams, collars of steam coils and like places. Occasional blobs of black oil dropped from upper beams or tank tops subsequent to cleaning operations at cross-respondents' yard.

(d) Failure to properly perform item 10 of contract specifications as will be more fully disclosed by evidence presented by cross-libelant at time of trial.

Interrogatory No. 19: (a) An exact computation of the extra miles traveled by the vessel on ac-

count of deviation for repairs is not possible at this time. However, the official mileage from Los Angeles to Manzanillo, Mexico, is 1205 miles, which when doubled, covering the deviation on round-trip voyage, would make a total of 2410 miles traveled during deviation.

(b) Approximately 169.3 barrels of Diesel oil were consumed during the above period of deviation according to calculations made to date.

(c) Additional fuel was furnished by the Shell Oil Company at San Pedro.

Interrogatory No. 20: (a) A free translation from Spanish to English of the agency disbursements indicates the following:

Launch hire 10/28 to 10/30 at $25.00 per day, plus tax	$ 76.35
Launch hire for use of captain and crew, 11/3	96.00
Launch hire for use of pilot (or mate), 11/4	25.00
Mexican Customs entry and clearance, charges and assessments 10/28 and 11/3	161.38
Replacing broken tool in naval machine shop 11/2	4.50
Refrigeration machinery repairs 11/1	70.00
Bronze soldering piece of machinery 10/31	40.00
Mexican officials trip to "Urania" on departure	29.47
Processing documents of entry by captain of the port, 10/28	10.00
Captain of the port handling dispatch documents on vessel's departure	20.00

Two mechanics to attend the ship's repairs, 11/3	80.00
Customs traffic dues, No. 3736230, 10/29	17.05
Sailor's home tax 10/29, receipt No. 3736231	10.00
Extra services to land and bring again on board spare engine parts with launch, 11/2	35.80
Motor car bill to convey Union Diesel Engine Co. engineer from air port to Manzanillo, 10/30	15.00
Motor car services for vessel's business: 11/2—$7.00; 11/4—$10.00	17.00
Panamanian Consular fees Manzanillo, 11/3	34.75
Medical attendance of seaman Charilaos Tziotis, 11/2	30.00
Medicines for above seaman, 11/10	175.10
Victualing bill 11/3	472.36
Machine shop services on Sunday, 11/10	80.00
Cable messages New York	10.75
Agencias Maritimas del Pacifico, S. A., agency fee	150.00

Accounts, including vouchers and invoices, for additional items of disbursement at Manzanillo, Mexico, for the M/T "Urania" have heretofore been forwarded to representatives of the cross-libelant in New York City for use in connection with the depositions being taken in that city of the former master, Andrew Beis, and the former engineer, P. Baxevanis, of the "Urania." Upon return of these documents, either as exhibits in

deposition, or separately, supplemental answer will be made as necessary to complete information requested by cross-respondent on this interrogatory.

(b) Disbursements were made to the individuals performing the services enumerated above through Agencias Maritimas del Pacifico, S. A., who acted as agents for the vessel and owners at Manzanillo, Mexico.

Interrogatory No. 21: (a) Disbursements made through the agents for the vessel and owners at Los Angeles which are claimed to have been caused by the breakdown, deviation and repair of the vessel include the following:

11/16/48 Clayton Mfg. Co., Repaired pump on steam generator	$678.86
11/12/48 E. W. Sayboldt & Co., Preliminary inspection cargo tanks	28.75
11/15/48 E. W. Sayboldt & Co., Final inspection tanks and certificate	28.75
11/5-11/17 Gen. S. S. Corp., Ltd., L. A., Agency fee representing vessel owner	455.00
11/5/48 Gen. S. S. Corp. Ltd., L. A., Reporting fee—ship's movements	2.50
11/17/48 L. A. Harbor Dept., Pilotage fees—L. A. Harbor	20.00
11/17/48 L. A. Harbor Dept., Dockage dues—L. A. Harbor	5.00
11/17/48 Hi-Ho Water Taxi Co., Ltd., Launch hire to ship—breakwater San Pedro	10.55
11/12 & 11/16/48 Guy B. Barham Co., Customs fees & customs broker fees	45.30

11/11/48 Guy B. Barham Co., Customs officers boarding fees—prorated..... 9.56
11/17/48 Westland & Son, Consular fees, U. S. Bill of Health, etc..... 25.00
10/27/48 United Airlines Air Freight, Freight charges, 1 carton engine parts to L. A..... 227.55
10/28/48 Hawaiian Freight Fwdrs. Ltd., Freight on 1 box gears L. A. to Manzanillo 28.83
11/15/48 United Airlines Air Freight, Freight on 3 boxes parts Oakland to L. A. 8.40
11/5/48 Gen. S. S. Corp. Ltd., L. A., Teletypewriter charges, San Pedro to N. Y.... 3.95
10/28-10/29 Gen. S. S. Corp. Ltd., L. A., Teletypewriter charges, San Pedro & L.A. 3.95
11/9-11/16 Gen. S. S. Corp. Ltd., L. A., Teletypewriter charges, L. A. to San Diego, Oakland..... 7.06
11/5 Gen. S. S. Corp. Ltd., L. A., Long distance tolls, San Pedro to San Diego.... 1.88
10/28-11/11 Gen. S. S. Corp. Ltd., L. A., Telegrams & Cables L. A. to various..... 9.09
11/11-11/19 Harry J. Summers, Attendance on vessel as owner's surveyor..... 200.00
11/11-11/17 Am. Bureau of Shipping, Attendance on vessel of classification surveyor 163.00
11/11-11/17 Toplis & Harding, Inc., Attendance on vessel of Lloyd's surveyor.... 154.81
11/11/48 Guy B. Barham Co., Service U. S. Immigration Inspector—prorated... 16.26

11/18 Gen. S. S. Corp. Ltd., L. A., Cable charges, L. A. to Manzanillo.....	2.20
11/10 San. Cal. Freight Lines, Auto freight charges, S. F. to Long Beach.....	3.23
11/5-11/17 Gen. S. S. Corp. Ltd., L. A., Postage and petties.....	10.00
	$2,149.48

The amount claimed hereinabove for agency disbursements at Los Angeles has been revised upwards since filing of the cross-libel on the basis of additional vouchers and invoices received by cross-libelant to date.

(b) Disbursements were made to the parties performing services enumerated above through the General Steamship Corporation, Ltd., at San Pedro who acted as agents for the vessel and owner at Los Angeles, California.

Interrogatory No. 22: (a) See answer to Interrogatory No. 21 (a). The following additional expenses were incurred during repair at Long Beach

11/16 Berbom Ship Supply Co., Engine & deck stores.....$	563.28
11/17 Berbom Ship Supply Co., Deck supplies	110.08
11/17 Berbom Ship Supply Co., Engine supplies	10.54
11/16 Berbom Ship Supply Co., Engine room supplies	261.17
11/16 Berbom Ship Supply Co., Steward's supplies	199.55

11/16 Consolidated Provision Co., Groceries, meat, fruit and vegetables	1,183.50
11/12 R. C. Griffith Co., Fish, vegetables & fruit	41.91
11/16 Marine Drug Co., Beverages	63.94
11/16 Howard Hartry, Tobacco & spirits	101.90
11/16 Marine Drug Co., Pharmaceutical & drug supplies	220.23
11/16 Klemp Typewriter Co., Stationery supplies	16.23
11/16 Klemp Typewriter Co., Typewriter	112.75
11/18 Radiomarine Corp. of America, Service radio dir. finder	156.24
11/17 Calif. Nautical Co., Adjust magnetic compass	65.00
11/17 Hi Ho Water Taxi Co. Ltd., Transport compass adjuster	11.50
11/11 Gen. S. S. Corp. Ltd., Cash advanced to master	500.00
11/12 Gen. S. S. Corp. Ltd., Cash advanced to master	1,000.00
11/15 Gen. S. S. Corp. Ltd., Cash advanced to master	2,500.00
11/16 Harbor Laundry Co., Ship's laundry	26.77
11/13-16 Norman Clinic, Medical service to seaman	19.50
11/15 Norman Clinic, Medical service to seaman	12.00
11/13 Norman Clinic, Medical service to seaman	5.25

11/13-16 San Pedro Comm. Hospital, Hospital charges for seaman..... 62.20

11/13 Marine Drug Co., Drugs for ill seaman 1.25

11/15-11/17 San Pedro Cab Co., Auto transp. for ship's representatives..... 44.40

In addition to the above, disbursements were made during the period involved for wages, overtime, marine and P.&I. insurance, and an allowance for depreciation as computed in answer to Interrogatory 10(a) hereinabove. The amount claimed in subparagraph 14 of Article IV of the cross libel is not based upon the amount of the specific disbursements enumerated above. The amount claimed is based upon the factors shown in answer to Interrogatory No. 10(a) and is based upon a revised calculation of the average monthly and per diem cost of operation for the vessel.

(b) See above.

(c) See above.

Interrogatory No. 23: As to subparagraphs (a), (b), (c) and (d), cross-libelant refers to and repleads its answers to Interrogatory No. 11 hereinabove.

(e) The 28-day period began on October 26, 1948, and terminated November 23, 1948.

COMPANIA NAVIERA
LIMITADA, a corporation,
Cross-Libelant.
By MERRITT SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Its Proctors

United States of America,
Western District of Washington,
Northern Division—ss.

Charles B. Howard, being first duly sworn, on oath deposes and says: That he is an attorney at law and a partner in the firm of Merritt, Summers & Bucey, proctors for the respondent-claimant and cross-libelant in the above action. That he makes this verification for and on behalf of the cross-libelant for the reason that there is no officer or other authorized agent of the cross-libelant now present within this District available to do so. That he is familiar with the answers to the interrogatories which have been prepared from draft submitted to an officer of the cross-libelant corporation in New York who has returned the draft with corrections and additions. That this affiant believes the aforementioned answers to be true and correct answers to the best of his knowledge and to the best of the information now available to cross-libelant and this affiant. That this affiant is authorized to make this verification for and on behalf of the cross-libelant corporation.

/s/ CHARLES B. HOWARD.

Subscribed and sworn to before me this 21st day of February, 1949.

[Seal] /s/ G. H. BUCEY,
Notary Public in and for the State of Washington, residing at Seattle.

Received Feb. 21, 1949.

[Endorsed]: Filed Feb. 21, 1949.

[Title of District Court and Cause.]

ANSWER TO CROSS-LIBEL

The answer of cross-respondents above named to the cross-libel of Compania Naviera Limitada, a corporation, in an alleged cause of repairs and damages, civil and maritime, admits, denies and alleges, as follows:

I.

As to Article I, cross-respondents admit the allegations thereof.

II.

As to Article II, cross-respondents admit the allegations thereof.

III.

As to Article III, cross-respondents deny each and every allegation contained therein, except in so far as heretofore affirmatively alleged by cross-respondents in their original libel filed in the above cause.

IV.

As to Article IV, cross-respondents deny each and every allegation contained therein.

V.

As to Article V, cross-respondents deny each and every allegation therein contained, and particularly deny that cross-libelant has been damaged in the sum of $41,389.51, or in any sum whatsoever.

VI.

As to Article VI, cross-respondents deny the alle-

gations thereof, excepting only the jurisdictional allegation.

Further Answering Said Cross-Libel, cross-respondents allege on information and belief:

VII.

That if cross-libelant was damaged in any sum as alleged, such damages were not caused by any mal-performance by cross-respondents but were solely, directly and proximately caused by inaction, lack of timely action, carelessness and negligence of the cross-libelant.

VIII.

That during and after the time when cross-respondents furnished to said vessel material, labor and services for the repair, alteration and renewal of said vessel, cross-libelant supervised, tested, inspected, approved and accepted said material, labor and services; that said supervision, testing, inspection, approval and acceptance constituted a waiver of defects, if any, in cross-respondents' performance, and the cross-libelant is estopped by reason of said supervision, testing, inspection, approval and acceptance to claim damages on account of defects, if any, in cross-respondents' performance.

IX.

That if there was any agreement between the parties as to the time of completion of the original services undertaken to be performed for the "Urania" by cross-respondents, cross-libelant waived its rights, if any, to rely on such agreement

by contracting with cross-respondents for additional services to be performed on the vessel.

X.

That as to the ammunition bulkhead referred to in Article IV, sub-section (2) of the cross-libel, cross-respondents were ordered by cross-libelant not to remove said bulkhead; that cross-libelant ordered cross-respondents to perform certain other work on the vessel in lieu of the removal of said bulkhead; that said other work was performed by cross-respondents pursuant to said order, the same being of a reasonable and agreed value equal to the amount of the agreed charge for the removal of said bulkhead.

XI.

That all and singular the premises are true.

Wherefore, cross-respondents pray that the cross-libel herein be dismissed with costs.

TODD, HOKANSON & WHITE,
/s/ RUSSELL V. HOKANSON,
Proctors for Libelants
and Cross-Respondents.

United States of America,
Western District of Washington—ss.

Russell V. Hokanson, being first duly sworn, upon oath deposes and says: That he is one of the proctors for libelants and cross-respondents in the above action and that he makes this verification for and on behalf of said libelants and cross-respond-

ents, being authorized so to do; that he has read the within and foregoing Answer to Cross-Libel, knows the contents thereof and believes the same to be true.

/s/ RUSSELL V. HOKANSON.

Subscribed and Sworn to before me this 25th day of February, 1949.

[Seal] /s/ RICHARD S. WHITE,
Notary Public in and for the State of Washington, residing at Seattle.

Copy received Feb. 25, 1949.

[Endorsed]: Filed Feb. 26, 1949.

[Title of District Court and Cause.]

MOTION FOR PRODUCTION OF DOCUMENTS, ETC., UNDER SUPREME COURT ADMIRALTY RULE 32

Libelants-cross-respondents move the court for an order requiring cross-libelant corporation, Compania Naviera Limitada:

(1) To produce each of the following documents at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, or at such other place as the court may direct, on or before the 17th day of March, 1949, or at such other time as the court may direct, and to permit libelants-cross-respondents, their proctors, technical advisers, and/or photographers to inspect,

copy and/or photograph each of said documents, to-wit:

(a) Any and all survey reports, bids, correspondence, messages, bills, receipts, vouchers and invoices, or true copies thereof, pertaining to the Motor Tanker "Urania," covering the period, or any part thereof, between August 1, 1948 and October 15, 1948, submitted by cross-libelant to, or submitted to or received by cross-libelant from, architects, underwriters, engineers, surveyors, or other persons, excluding proctors, but including without limiting the generality of the foregoing, the American Bureau of Shipping and Harry F. Williams, surveyor.

(b) Any and all survey reports, bids, correspondence, messages, bills, receipts, vouchers and invoices, or true copies thereof, pertaining to the Motor Tanker "Urania," covering the period, or any part thereof, between October 15, 1948 and November 23, 1948, submitted by cross-libelant to, or submitted to or received by cross-libelant from architects, underwriters, engineers, surveyors, or other persons, excluding proctors, but including without limiting the generality of the foregoing, owner's surveyor, Harry J. Summers, the American Bureau of Shipping, the Union Diesel Engine Company of Oakland, California, Martin Ship Service Company of Wilmington, California, Craig Shipbuilding Company of Long Beach, California, Pacific Towboat & Salvage Company, E. W. Sayboldt & Co., and reports of surveys obtained from

Lloyds' agent, Captain Walter Gay, by Best & Co., Lloyds' sub-agents, Frank S. Dupuy & Son, George M. Dupuy, surveyor.

(c) Any and all deck log books, engine room log books, and bell books of the vessel, covering the period between August 1, 1948 and November 23, 1948.

(d) Contract dated December 13, 1948, for charter party between Compania Naviera Limitada of Panama, and Coastwise Petroleum Company.

(2) To produce each of the following objects at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, or at such other place as the court may direct, on or before the 17th day of March, 1949, or at such other time as the court may direct, and to permit libelants-cross-respondents, their proctors, technical advisers and/or photographers, to inspect and photograph each of said objects.

(a) Any and all engine parts or other parts of the Motor Tanker "Urania" removed from said vessel after October 15, 1948, for the purpose of introducing the same into evidence as exhibits upon the trial of the above entitled cause.

TODD, HOKANSON & WHITE,
/s/ RICHARD S. WHITE,
Proctors for Libelants-
Cross-Respondents.

United States of America,
Western District of Washington—ss.

Richard S. White, being first duly sworn, on oath deposes and says:

That he is one of the proctors for libelants-cross-respondents and makes this verification for and on behalf of said libelants-cross-respondents in support of the foregoing motion, being authorized so to do; that he is informed and believes that the cross-libelant corporation has the possession, custody or control of each of the foregoing documents and objects; that each of them constitute or contains evidence relevant and material to a matter involved in this action; that it is necessary that the libelants-cross-respondents obtain the relief requested in order to enable them to prepare intelligently and accurately to meet the issues raised by the pleadings herein.

/s/ RICHARD S. WHITE.

Subscribed and Sworn to before me this 25th day of February, 1949.

[Seal] /s/ RUSSELL V. HOKANSON,
Notary Public in and for the State of Washington, residing at Seattle.

Copy received Feb. 25, 1949.

[Endorsed]: Filed Feb. 26, 1949.

[Title of District Court and Cause.]

ORDER ON MOTION FOR PRODUCTION OF DOCUMENTS, ETC., UNDER SUPREME COURT ADMIRALTY RULE 32

It appearing that cross-respondents moved the Court for an order requiring cross-libelant to produce certain documents, etc., under Supreme Court Admiralty Rule 32, and the said motion having been regularly noted for hearing on March 7, 1949, before the undersigned Judge of the above entitled Court, and it further appearing that proctors for cross-libelant and cross-respondents having agreed with respect to said motion, and the Court being fully advised in the premises,

Now, Therefore, It Is Hereby Ordered and Decreed that cross-libelant corporation, Compania Naviera Limitada, shall be and is hereby required:

(1) To produce each of the following documents at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, on or before the 14th day of March, 1949, and to permit libelants-cross-respondents, their proctors, technical advisers, and/or photographers to inspect, copy and/or photograph each of said documents, to-wit:

(a) Any and all survey reports, bids, correspondence, messages, bills, receipts, vouchers and invoices, or true copies thereof, pertaining to the Motor Tanker "Urania," covering the period, or any part thereof, between August 1, 1948 and Oc-

tober 15, 1948, submitted by cross-libelant to, or submitted to or received by cross-libelant from, architects, underwriters, engineers, surveyors, or other persons, excluding proctors, but including without limiting the generality of the foregoing, the American Bureau of Shipping and Harry F. Williams, surveyor.

(b) Any and all survey reports, bids, correspondence, messages, bills, receipts, vouchers and invoices, or true copies thereof, pertaining to the Motor Tanker "Urania," covering the period, or any part thereof, between October 15, 1948, and November 23, 1948, submitted by cross-libelant to, or submitted to or received by cross-libelant from architects, underwriters, engineers, surveyors, or other persons, excluding proctors, but including without limiting the generality of the foregoing, owner's surveyor, Harry J. Summers, the American Bureau of Shipping, the Union Diesel Engine Company of Oakland, California, Martin Ship Service Company of Wilmington, California, Craig Shipbuilding Company of Long Beach, California, Pacific Towboat & Salvage Company, E. W. Sayboldt & Co., and reports of surveys obtained from Lloyds' agent, Captain Walter Gay, by Best & Co., Lloyds' sub-agents, Frank S. Dupuy & Son, George M. Dupuy, surveyor.

(c) Any and all deck log books, engine room log books, and bell books of the vessel, covering the period between August 1, 1948 and November 23, 1948.

(d) Contract dated December 13, 1948, for charter party between Compania Naviera Limitada of Panama, and Coastwise Petroleum Company.

(2) To produce each of the following objects at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, on or before the 14th day of March, 1949, and to permit libelants-cross-respondents, their proctors, technical advisers and/or photographers, to inspect and photograph each of said objects:

(a) Any and all engine parts or other parts of the Motor Tanker "Urania" removed from said vessel after October 15, 1948, for the purposes of introducing the same into evidence as exhibits upon the trial of the above entitled cause.

Done in open Court this 9th day of March, 1949.

/s/ JOHN C. BOWEN,
Judge.

Approved and Presented by:

TODD, HOKANSON & WHITE,
Proctors for Libelants,
By /s/ RICHARD S. WHITE.

Approved:

MERRITT, SUMMERS
& BUCEY,
Proctors for Claimant,
By /s/ CHARLES B. HOWARD.

[Endorsed]: Filed Mar. 9, 1949.

[Title of District Court and Cause.]

NOTICE OF INTENTION TO AMEND CROSS-LIBEL

To: The Libelants and Cross-Respondents Above Named and to Their Proctors of Record, Todd, Hokanson & White (formerly Langlie & Todd):

Claimant and cross-libelant, Compania Naviera Limitada, a corporation, does hereby give notice that it will, on April 6, 1949, apply to the Honorable John C. Bowen, judge of the above entitled court, pursuant to General Admiralty Rule 23, for an order permitting amendment of cross-libel in the following respects:

(a) To eliminate and delete from the cross-libel subparagraph (1) of paragraph IV reading as follows: "Tools taken from the vessel and not returned thereto—$368.00."

(b) To add to paragraph IV of said cross-libel a new subparagraph (1) reading as follows: "Repairs to Clayton boiler and generator at Long Beach —$678.86."

The amendment of the cross-libel in the above respects would result in the substitution of a new and revised page 3 in lieu of the page 3 now appearing in the cross-libel, as per proposed amended page 3, copy of which is attached hereto.

Dated this 18th day of March, 1949, at Seattle, Washington.

MERRITT, SUMMERS
& BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant
and Cross-libelant.

AMENDED PAGE 3

[Cross-Libel, Document 15 of Designation, set out on page 18 to page 23 inclusive of this printed record.]

expenses which have not been definitely ascertained as to exact amount, but have been presently estimated as follows:

(1) Repairs to Clayton boiler and generator at Long Beach	$ 678.86
(2) Removal of ammunition bulkhead not effected	275.00
(3) Expense incurred during delay at Winslow, Washington, (16 days at $246 per day)	3936.00
(4) Loss of profits during delay at Winslow, Washington, (16 days at $250 per day)	4000.00
(5) Telemotor repairs at Port Angeles, Washington, (including 2 men, one surveyor, and air transportation)	262.51
(6) Deviation to Port Angeles, Washington, for telemotor repairs	310.00
(7) Towage after breakdown from Manzanillo, Mexico, to San Pedro, California	4286.00
(8) Engine repairs at Long Beach, California	4475.00
(9) Miscellaneous corrective repairs at Long Beach, California	3214.00
(10) Corrective cleaning of tanks at Long Beach, California	2157.00

Copy received March 18, 1949.

[Endorsed]: Filed March 18, 1949.

[Title of District Court and Cause.]

MOTION FOR PRODUCTION

Comes now the claimant and cross-libelant above named and, pursuant to Admiralty Rule 32, moves the court for an order directed to the libelant and cross-respondent requiring the production at a time and place to be specified by the court before trial of the following documents and articles:

(1) Any specifications, invitations, instructions to bidders, or other written documents relating to the specifications and proposed bid obtained or received by Commercial Ship Repair from the claimant and cross-libelant herein relating to the tanker "Urania."

(2) Any bids or modifications of bid issued by the libelant and cross respondent in connection with the tanker "Urania."

(3) Any and all suppliers' or manufacturers' invoices, and/or inventory or stock withdrawal and price records or documents relating to spare parts furnished to the respondent vessel by the libelant.

(4) Any and all time sheets and records showing breakdown of time of workmen and supervisors furnished to the respondent vessel on each item of the contract and/or extra specifications.

(5) Any and all communications relating to demands made by libelant upon the claimant for payment of the outstanding accounts up to the date of filing of libel herein.

(6) Any and all work orders, time sheets or similar documents of account containing approval

by signature of one Harry F. Williams on the accounts involving the respondent vessel.

(7) Any and all engine parts or other parts of the motor tanker "Urania" removed from said vessel by the libelant or now in the possession of the libelant or its representatives which the libelant intends to introduce into evidence as exhibits upon the trial of the above cause.

MERRITT, SUMMERS
& BUCEY,
CHARLES B. HOWARD,
/s/ LANE SUMMERS,
Proctors for Claimant
and Cross-libelant.

United States of America,
State of Washington, County of King—ss.

Lane Summers, being first duly sworn, on oath deposes and says:

That he is an attorney at law and a member of the firm of Merritt, Summers & Bucey, and as such one of the proctors for claimant and cross-libelant in the above entitled cause.

That this affidavit is made in support of the foregoing motion for production. That the documents and articles mentioned in said motion constitute evidence and exhibits material to cross-libelant's claims as made by its cross-libel, and are essential to proper preparation of cross-libelant's case. That such documents and articles are either within the possession of or under the control of cross-respond-

ent, its agents or employees, and are not available to cross-libelant without production thereof upon said motion. That said documents and articles are not of a privileged nature.

/s/ LANE SUMMERS.

Subscribed and sworn to before me this 28th day of March, 1949.

[Seal] /s/ G. F. BUCEY,

Notary Public in and for the State of Washington, residing at Seattle.

Copy received March 28, 1949.

[Endorsed]: Filed March 28, 1949.

[Title of District Court and Cause.]

ORDER ON MOTION FOR PRODUCTION OF DOCUMENTS UNDER ADMIRALTY RULE 32

It appearing that claimant and cross-libelant has heretofore moved the court for an order directing and requiring libelant and cross-respondent to produce certain documents and other papers at a time and place to be specified by the court before trial, and it further appearing that proctors for cross-libelant and cross-respondents have agreed with respect to said motion, and the court being fully advised in the premises, now, therefore, it is hereby Ordered and Decreed that libelants and cross-respondents shall be and are required to produce,

on or before the 6th day of April, 1949, the following documents and articles:

(1) Any specifications, invitations, instructions to bidders, or other written documents relating to the specifications and proposed bid obtained or received by Commercial Ship Repair from the claimant and cross-libelant herein relating to the tanker "Urania."

(2) Any bids or modifications of bid issued by the libelant and cross-respondent in connection with the tanker "Urania."

(3) Any and all suppliers' or manufacturers' invoices, and/or inventory or stock withdrawal and price records or documents relating to spare parts furnished to the respondent vessel by the libelant.

(4) Any and all time sheets and records showing breakdown of time of workmen and supervisors furnished to the respondent vessel on each item of the contract and/or extra specifications.

(5) Any and all communications relating to demands made by libelant upon the claimant for payment of the outstanding accounts up to the date of filing of libel herein.

(6) Any and all work orders, time sheets or similar documents of account containing approval by signature of one Harry F. Williams on the accounts involving the respondent vessel.

(7) Any and all engine parts or other parts of the motor tanker "Urania" removed from said vessel by the libelant or now in the possession of the libelant or its representatives which the libelant

intends to introduce into evidence as exhibits upon the trial of the above cause.

Done in open court this 6th day of April, 1949.

/s/ JOHN C. BOWEN,
U. S. District Judge.

Approved by:

TODD, HOKANSON & WHITE,
/s/ RUSSELL V. HOKANSON,
Of Proctors for Libelants
and Cross-Respondents.

Presented by:

/s/ THEODORE A. LeGROS,
Of Proctors for Claimant
and Cross-Libelant.

[Endorsed]: Filed April 6, 1949.

In the District Court of the United States for the Western District of Washington, Northern Division

No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-partners, d/b/a COMMERCIAL SHIP REPAIR,

Libelants,

vs.

M/T "URANIA," etc.,

Respondent,

COMPANIA NAVIERA LIMITADA,

Claimant.

COURT'S DECISION

Announced on April 18, 1949

The Court: All of the original contract items, as I understand it, are undisputed so far as the work done and the charges made therefor are concerned, with the exception of certain substituted work.

The respondent frankly observed in the course of argument on the merits that the extent of Mr. Williams' authority to represent the owner of the vessel is perhaps the one outstanding question for determination by the Court, at least so far as the right of the libelants to recover on account of the matters and things alleged in the libel may be concerned. The Court has heard and carefully con-

sidered all of the testimony upon that issue, as well as all the other issues in the case.

I know of no fact in the case more firmly established than that Mr. Williams was held out by the owner as having authority to represent the owner in all things concerning the work and the ordering of extra repairs not covered by the original contract. So far as concerns the owner advising the libelants that there was any limitation of any character upon the authority of Mr. Williams to represent the owner, there is no credible evidence in this case to support that.

The owner, through the testimony of Mr. Antippas, put forward a contention in effect that the libelants should have been aware of the fact that in some special matters, Mr. Williams could not have been supposed to have authority from the owners to cover his handling of those matters and acting for the owner to the same extent that the owner through some corporate official could have acted, but there is nothing in the evidence to warrant any such contention on the part of the owner.

Mr. Williams was sent here to represent the owner, and he did represent the owner in everything that concerned the doing of this work and the acts that were reasonably connected with it. No acts done by Mr. Williams for the owner were ever repudiated until after this libel was filed. The Court, therefore, finds, concludes and decides from a preponderance of the evidence that the authority of Mr. Williams to represent and bind the owner

was without limitation so far as the matters and things alleged in the libel are concerned.

In every instance of Mr. Williams' approval of work done and in every instance of acts done by Mr. Williams in connection with the repairs and work on the "Urania," Mr. Williams' authority to bind the owner was ample and sufficient, and Mr. Williams' acts, both as to original contract items and extra items, did bind the owner of the "Urania."

He had every appearance of having unlimited authority to represent the owner in approving the work and authorizing extras in every instance when he purported to act for the owner. If there was in fact in the owner's mind any thought of limitation of such authority, it was incumbent upon the owner to so advise the libelants in some certain way. No such limitation was ever communicated to the libelants.

The Court, from a preponderance of the evidence, further finds, concludes and decides that all of the work which was done in pursuance of the original contract and in connection with the extras ordered by Mr. Williams was actually done as alleged in the libel, was authoritatively approved by Mr. Williams on behalf of the owner as alleged in the libel, and that the charges made by libelants therefor are in all respects reasonable, and libelants are entitled to recover of and from the respondent all of the sums as prayed for in the libel.

The substitute work was done in place of the item

in the contract calling for removal of a bulkhead at a cost of $200. Mr. Williams himself testified that although the bulkhead was not removed according to the specifications, additional substitute work was done in amount and value satisfactory to him, and, therefore, there will be no deduction from the sums asked for by libelants on account of that $200 bulkhead removal item.

Referring now to the extra coils for the Clayton boiler, Mr. Featherstone, one of the libelants, clearly recalled the transactions regarding that matter, when he spoke of not having any of those extra coils at the Winslow yard and of having some of them in libelants' Seattle warehouse where the libelants ordinarily kept spare parts used in ship repairs, when he spoke of having the extra coils looked over carefully and of having selected one set that was regarded as suitable for the Clayton boiler on the "Urania," and of having that extra set transported from Seattle over to the Winslow yard and there put aboard the "Urania." It is not likely that Mr. Featherstone would have had that done without any authorization from Mr. Williams. Mr. Featherstone's recollection of the foregoing details concerning the extra coils is significant.

It is more likely that Mr. Williams has forgotten the detail. The Court declines to allow any deductions from the amounts to be recovered by libelants on account of the work substituted for the bulkhead removal and extra coils for the Clayton boiler.

Mr. Williams was on the job a great percentage

of the time, and he worked without any evidence of friction with the superintendents and the foremen and workmen in and about the yard, and so far as the evidence discloses, there never were any irreconcilable differences between him and others working in the yard as to the amount or quality of the work called for by the original contract or the extra job orders.

The Court was convinced more by the testimony of Mr. Williams than by any other testimony, as to the fairness of these items, respecting both the quantity and prices of materials and work furnished by libelants. Particularly, his testimony in effect that the repair job as a whole was done in a good workmanlike manner caused the Court to conclude that the libelants did supply good materials and good shipyard work in connection with all the repairs made.

This the Court so concludes notwithstanding the fact that some of the shipyard foremen or subforemen failed to relate from the witness stand very clear-cut narratives or accounts of what was done, or definite personal knowledge of details of the work actually done. In at least three instances, I thought libelants' witnesses showed a surprising lack of personal recollection of the details of the work done.

Yet, I am convinced, from a consideration of all the evidence and by a preponderance thereof, that one of the reasons why some of these foremen or subforemen may not have retained in their minds in minute detail what they personally did or saw

done in connection with the repairs, was that they were doing so much of the work under direction of ship officers or personnel, notably the chief engineer or persons in the engine room department, and they were doing the work in detail as ordered rather than in accordance with written specifications or what the foremen or subforemen thought should be done. Consequently, in such instances, the final functioning of a repaired unit was not to be so much in accordance with the satisfaction of a foreman or subforeman, but was to be rather for the approval of Mr. Williams and Mr. Gallagher or as required by a department of the ship or its head particularly interested in the specific item.

Coming now to the cross libel, it appears from the allegations of the cross libel and testimony in support thereof that as a matter of fact the cross libelant, the owner of the vessel, sustained considerable expenses in California and Mexican waters and ports due to a failure of the main engine, and more specifically, due to the galling of the vertical timing gears of the main engine. As to cross libelant's right to recover on account of the matters and things set forth in the cross libel, the burden rests upon the cross libelant to prove as alleged that such engine failures were caused by faulty repairs made by libelant.

So far as the main engine and its auxiliary equipment are concerned, all parts operated efficiently from the time of the beginning of the sea trial at Seattle until the vessel arrived off Manzanillo,

Mexico, more than eleven days later. The sea trial was had before the vessel departed from Seattle. The occurrence of the main engine's failure off Manzanillo was about eleven days after the vessel left Seattle.

The engine functioned properly for ten days. The main engine failure first occurred on the eleventh day out of Seattle and about a day after the lubricating oil was changed. No difficulty in the functioning of the engine or any of its auxiliary equipment had been experienced during the sea trial or at any time during those ten days out of Seattle before the lubricating oil was changed. The Court is not entirely convinced by the evidence as to just exactly what was the cause of that engine trouble or of the galling of those gears, but I am convinced of one thing, and that is, of the failure of the cross libelant to sustain the burden of showing, by a preponderance of the evidence, just what the cause was.

I am not entirely satisfied in my own mind from the evidence whether or not there actually was contamination in the lubricating oil. If it is established by the evidence that lube oil contamination of some kind or other was the cause, I am not entirely satisfied as to the nature of the contamination, whether it was sea water or whether it was some foreign matter other than sea water which had been introduced into the lubricating oil.

Furthermore, I am not satisfied from the evidence as to what was the means of introducing the foreign matter, either sea water or other kind of contamina-

tion, if there was some kind of contamination, into the lubricating oil. If there was sea water contamination, I am not sure whether it all was admitted through leaks or whether it was admitted in some other way.

Cross libelant contends and it might be supposed that a leak in the partition wall between the sea water cooling agent and the lube oil admitted the sea water into the lube oil, but I do not know from the evidence certainly that the leaks, if any, were caused by any defective repair work done at Seattle. If leaks did in fact admit the sea water, the leaks might have developed from ordinary wear and tear after the vessel left Seattle, instead of from faulty repairs at Seattle.

One witness testified that the chief engineer definitely instructed just what was to be done, what kind of work, servicing and testing were to be done with respect to the heat exchangers and lube oil cooler, and that the libelants as repairmen undertook on their own responsibility no duty to determine the extent of repairs or servicing or testing which was to be done, but did only what the chief engineer specifically directed in pursuance of the contract stipulation in that connection.

Also, I do not think that it is to be concluded from the evidence before the Court here that the galling of the gears was not caused in part by some abnormal pressures not connected with the repairs. There is considerable uncertainty about what might have caused the galling of the gears, but one of the

outstanding circumstances surrounding the problem is a circumstance very strongly in favor of the workmanlike quality of the repairs made at Seattle, namely, that the engine and its auxiliary parts functioned normally and satisfactorily, not only at the time of the sea trial, when Mr. Williams, on behalf of the owner, and also Mr. Gallagher, on behalf of the American Bureau of Shipping, approved the repair work, but also during the ten days' run from Seattle to a point off Manzanillo, during all of which time there was no evidence of improper functioning of either the main engine or its timing gears, but on the contrary, such functioning was proper.

No one can decisively conclude from the evidence in this case that such damage or galling as the timing gears sustained might not have all been caused during the day that they were operating after the first change of lubricating oil was made following the initial ten days' run from Seattle.

A substantial portion of all of the repair work done by libelants was done not to the extent and in the manner as determined by the discretion of the libelants, but according to the discretion and direction of those representing the owner of the vessel as the contract provided. In that connection, we should bear in mind the fact that the vessel had been out of use for some time before the repairs were made.

A relatively minor failure or damage occurred near Port Angeles when the telemotor system failed. But the statement on page 6 of Libelant's Exhibit 17, item 41(a) that, "All parts of the steering engine

were examined and were found in good condition," cannot be lightly laid aside, for that is what Mr. Gallagher, as a representative of the American Bureau of Shipping, found from his observation of the telemotor's functioning on the sea trial.

That finding, taken in connection with other testimony in the case, convinces the Court that the work of repair and servicing of the telemotor system was done in a good workmanlike manner and in accordance with good shipyard practice, and that the failure in that system occurring near Port Angeles was due to causes other than improper work of libelants.

Finally, it is the finding, conclusion and decision of the Court from a preponderance of the evidence in this case that the cross libelants take nothing by the cross libel. It is the further decision of the Court that libelants recover their taxable costs herein. Such recoveries as are allowed by the Court in favor of libelants shall be without interest prior to entry of judgment and decree if such entry can be soon accomplished.

Is there any issue tendered in the libel or cross libel or any answer to either of them not covered by the Court's announced decision? If so, will you advise me of it now?

Mr. Howard: I believe there is one item that was not specifically commented on with respect to the cross libel, the claim for cost of repairs to the Clayton boiler.

The Court: I do not think as to that item, any more than the others, that the cross libelant has

sustained its burden of proving the repair work was defective or other than workmanlike in accordance with good shipyard practice, and for that reason the Court does as to that item specifically deny recovery to the cross libelant.

(Discussion re date of further proceedings.)

The Court: This case is continued until Thursday, May 5, 1949, at 10:00 o'clock in the forenoon, for the purpose of settling and entering findings of fact, conclusions of law and decree.

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

Costs

	Amount Claimed	Amount Allowed
Docket fees (Proctor's) libel and cross-libel —$20 each	$ 40.00	$ 40.00
Proctor's fee (each deposition read in evidence at $2.50 each—James D. Clarke, S. W. Newell, Arleigh O. Biehler, George W. Rourke, M. L. Newell, William H. Weiler, Edwin W. Pike, George M. Dupuy, Harry J. Summers, Andreas Beis, P. Baxevanis, N. A. Cross, Frank H. Gallagher.)	32.50	32.50

Disbursements

			Amount Claimed	Amount Allowed
Clerk's fees			$ 15.00	$ 15.00
Marchal's fees—advertising, keeper service, etc.			48.40	48.40
Disbursement for notary's fee and original transcript, Gallagher deposition			151.40	151.40
Cost bond on libel—premium			10.00	10.00
Witness fees:				
Name	Days	Miles		
Arthur H. Lindgren	2 (Winslow)	40	6.00	6.00
Harry F. Williams	1	2	2.10	2.10
Frederick J. Harper	1 (Winslow)	20	3.00	3.00
Carl J. Nordstrom	1	2	2.10	2.10
Richard Storrs	1	2	2.10	2.10
Ole Lillehei	2 (Winslow)	40	6.00	6.00
A. H. McDonald	1	2	2.10	2.10
J. L. Sweetin	1	2	2.10	2.10
Fred Finn	1 (San Francisco)	200	12.00	12.00
Walter Oakland	1 (Winslow)	20	3.00	3.00
Harold Woodman	1 (Winslow)	20	3.00	3.00
J. D. Gilmour	1	2	2.10	2.10
Lester Short	1	2	2.10	2.10
Harold B. Wells	1 (Winslow)	20	3.00	3.00
Frank E. Blumberg	2	4	4.20	4.20
Alfred Amdahl	1 (Winslow)	20	3.00	3.00
Herman Sanwick	1	2	2.10	2.10
Taxed			$357.30	$357.30

Taxed May 2, 1949.

/s/ MILLARD T. THOMAS,
Clerk.

United States of America,
Western District of Washington—ss.

Russell V. Hokanson, being duly sworn, deposes and says: That he is one of the proctors for the

libelants and cross-respondents in the above entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

/s/ RUSSELL V. HOKANSON.

Subscribed and sworn to before me this 27th day of April, 1949.

[Seal] /s/ STUART W. TODD,
Notary Public in and for the State of Washington, residing at Seattle.

To: Compania Naviera Limitada, a corporation, and to Merritt, Summers & Bucey, its proctors.

You Will Please Take Notice that on Monday, the 2d day of May, 1949, at the hour of 9:30 o'clock a.m., application will be made to the Clerk of said Court, to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

TODD, HOKANSON & WHITE,
Proctors for Libelants and
Cross-respondents.

Receipt of copy acknowledged.

[Endorsed]: Filed April 27, 1949.

In the District Court of the United States for the Western District of Washington, Northern Division

In Admiralty—No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-partners, doing business under the assumed name and style of Commercial Ship Repair,

Libelants,

vs.

THE MOTOR TANKER "URANIA," her engines, tackle, apparel, furniture and equipment,

Respondent,

COMPANIA NAVIERA LIMITADA, a corporation,

Claimant.

COMPANIA NAVIERA LIMITADA, a corporation,

Cross-libelant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, co-partners, doing business under the assumed name and style of Commercial Ship Repair,

Cross-respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Cause having come on for trial before the undersigned Judge of the above entitled court sitting in admiralty on April 7, 1949, upon the allegations of the libel and answer thereto, and the cross-libel

and answer thereto, and cross-libelant having by oral trial amendment deleted items (1), (9) and (10) of Article IV of its cross-libel, and by written trial amendment having substituted a new item (1) to Article IV of its cross-libel, and the court having approved all of said amendments, and cross-respondents having moved for dismissal of the cross-libel at the conclusion of the testimony adduced in support thereof, and the court having denied said motion save and except as to items (3) and (4) of Article IV of said cross-libel with respect to which cross-respondents' motion to dismiss was granted, and said trial having been concluded on April 18, 1949, and both sides having rested both as to the libel and cross-libel, and the court having heard and considered the evidence and the arguments of counsel, and being fully advised in the premises, and having on April 18, 1949, rendered its oral decision, now makes the following:

Findings of Fact

I.

That at all times herein mentioned, libelants-cross-respondents, E. A. Black and J. J. Featherstone (hereinafter described as libelants), were and now are co-partners doing business under the assumed name and style of Commercial Ship Repair, with an office and place of business in the Port of Winslow, State of Washington.

II.

That the respondent vessel, the Motor Tanker Urania, was at all times herein mentioned owned

by claimant-cross-libelant (hereinafter referred to as claimant corporation), Compania Naviera Limitada, a corporation organized and existing under the laws of the Republic of Panama. That said vessel was, at the time of the filing of the libel herein, to-wit, on October 13, 1948, lying afloat in the navigable waters of Puget Sound at Winslow, Washington, and within the jurisdiction of this court, and that the causes herein sued upon are within the admiralty and maritime jurisdiction of this court.

III.

That heretofore and on or about August 4, 1948, at Seattle, Washington, claimant corporation, Compania Naviera Limitada, made and entered into a contract with libelants whereby libelants agreed to furnish to said motor tanker Urania material, labor and services for the repair, alteration and renewal of said vessel, in accordance with specifications then and there agreed upon (Libelant's Exhibit 1, admitted in evidence), for the agreed price of $40,-155.00. That claimant corporation and libelants further agreed at said time and place that an additional item relating to installation on said vessel of a chart room would be performed by libelants for the sum of $1500.00 if claimant corporation's representative, Harry F. Williams, should order such installation to be made; that pursuant to said agreement said Harry F. Williams ordered said installation, and that the total contract price thereupon was increased to the agreed amount of $41,655.00. (The contract described in this paragraph is hereinafter referred to as original contract.)

IV.

That pursuant to said original contract, libelants furnished to respondent vessel at libelants' shipyard at Winslow, Washington, all of said material, labor and services in accordance with the specifications therefor in a timely, competent and workmanlike manner, save and except item 36 of the said specifications, relating to the removal of an ammunition storeroom bulkhead, which item was ordered cancelled by claimant corporation by and through its authorized representative, Harry F. Williams, and in lieu of the performance of said item it was agreed between claimant corporation and libelants that certain substitute work of a reasonable and agreed value equal to the value of item 36, should be performed by libelants; that in accordance with said agreement libelants performed the agreed substitute work on said vessel in lieu of item 36, in a timely, competent and workmanlike manner.

V.

That at the time and place of the making of the original contract, claimant corporation, acting by and through its authorized representative, Demetri Antippas, a director of said corporation, advised libelants that Harry F. Williams, a marine surveyor from New York City, who was then and there present, would remain at Winslow as owner's representative and would have full authority to supervise the making of repairs, alterations and renewals to said vessel and was empowered on behalf of claim-

ant corporation to order from libelants, in addition to the items specified by the original contract, such material, labor, services and spare parts relating to the repair, alteration and renewal of said vessel, as he, the said Harry F. Williams, deemed necessary and appropriate, and for all purposes to represent claimant corporation in connection with the repair, alteration and renewal of said vessel by libelants.

VI.

That pursuant to the arrangements made between claimant corporation and libelants and as the work progressed on the original contract, said Harry F. Williams from time to time ordered libelants to furnish additional material, labor and services for the repair, alteration and renewal of respondent vessel and spare parts for said vessel; that all said additional material, labor and services as ordered were furnished by libelants to said vessel in a timely, competent and workmanlike manner, and the price for the same was negotiated between said Harry F. Williams, as owner's representative, and libelants; that $38,191.00 was the total price agreed upon by said parties for said additional work; that the spare parts ordered for said vessel by Harry F. Williams as owner's representative were timely furnished to said vessel by libelants, and that $6,920.46 was the total price agreed upon by said parties for said spare parts.

VII.

That the total price for additional material, labor, services and spare parts furnished said vessel by

libelants is in all respects fair and reasonable; that failure, if any, on the part of libelants to accomplish all items listed in job order covering additional work (Libelant's Exhibit 4 admitted in evidence) was by specific order of claimant corporation's representative, Harry F. Williams, and that failure fully to accomplish all items therein listed was equalized by substituted work performed at the request of Harry F. Williams by libelants in lieu of omitted items and by negotiations on total price.

That all items listed on spare parts invoice (Libelant's Exhibit 6 admitted in evidence), including spare boiler coils, were furnished and properly allocated to spare parts in accordance with agreement between Harry F. Williams and libelants, and that the total price therefor was in all respects fair and reasonable.

VIII.

That Harry F. Williams on October 8, 1948, signed and approved invoices as owner's representative covering all labor, material, services and spare parts furnished by libelants to respondent vessel, in the total amounts as follows:

Original contract	$41,655.00
Additional work	38,191.00
	$79,846.00
State Sales Tax—3%	2,392.68
	$82,238.68
Spare parts	6,920.46
State Sales Tax—3%	207.61
Total	$89,366.75

That said Harry F. Williams had authority on behalf of claimant corporation to order said additional work, spare parts, substituted work and to negotiate and approve the prices therefor. That said Harry F. Williams had authority on behalf of claimant corporation as its representative to approve and accept all labor, material, services and spare parts furnished by libelants to said vessel and that said Harry F. Williams did approve and accept the same on October 8, 1948. That in addition thereto said vessel was approved and passed for classification by American Bureau of Shipping on October 9, 1948, and that all labor, material, services and spare parts furnished by libelants to said vessel were accepted and approved by the master of said vessel prior to October 13, 1948.

IX.

That even if limitations had been imposed by claimant corporation upon the authority of Harry F. Williams to act for it in all matters connected with the repair, alteration and renewal of respondent vessel by libelants (and this court expressly finds that no such limitations were imposed), this court would find and does find that by reason of the relationship existing between libelants and claimant corporation, the actual conduct of claimant corporation and its agents, the failure of claimant corporation to communicate to libelants the limitations, if any, upon the authority of said Harry F. Williams, and further, by reason of the custom and practice with respect to the authority of marine surveyors

acting as owners' representatives prevailing in the Puget Sound area at all times herein mentioned, libelants were entitled to and did deal with and rely upon the acts of the said Harry F. Williams as the acts of claimant corporation.

X.

That of the total amount owing by claimant corporation to libelants covering all material, labor, services and spare parts furnished to respondent vessel as hereinbefore described, including State sales tax, to-wit, the total sum of $89,366.75, claimant corporation has paid the libelants the sum of $25,000 only, which payment was made on October 4, 1948. That there was due and owing to libelants by claimant corporation on October 13, 1948, the sum of $64,-366.75, no part of which balance has been paid to date, and that libelants, on said date, had a valid claim of maritime lien upon respondent vessel for the amount due; that thereafter, on October 15, 1948, upon the filing herein of a release and cost bond in the sum of $80,000.00, executed by claimant corporation as principal and National Surety Corporation as surety, conditioned to abide by and answer final decree in this cause, respondent vessel was released from arrest.

XI.

That any provision for completion of work under the specifications of the original contract within eighteen working days, as alleged by claimant corporation in its cross-libel, was expressly waived by

claimant corporation on or about August 4, 1948; that no time was fixed by the parties within which all work specified under original contract together with additional work and spare parts ordered thereafter was to be completed; that all of said work was completed in a reasonable time and that claimant corporation has failed to sustain proof as to allegations of delay in completion of work or of damage for expenses during alleged delay or loss of profits by reason of alleged delay at Winslow, Washington.

XII.

That all work performed by libelants on the telemotor and Clayton Boiler of respondent vessel was performed in a competent, workmanlike manner and in accordance with good shipyard practice, and was accepted and approved by claimant corporation; that claimant corporation has not sustained proof as to allegations of damage allegedly caused by libelants' malperformance concerning such work.

XIII.

That all work performed by libelants' employees on main engine of respondent vessel, save that done by riggers, was done at the direction of and under the supervision and control of the chief engineer of respondent vessel; that with respect to work on main engine of said vessel libelants undertook on their own responsibility no duty to determine the extent of repairs, servicing or testing necessary, but did only what the chief engineer of said vessel

directed in pursuance of contract stipulation in that connection; that all work relating to main engine performed by libelants' employees as hereinabove described was done in a competent and workmanlike manner and was accepted and approved by claimant corporation; that claimant corporation has failed to sustain proof as to cause of main engine breakdowns and that whatever the cause or causes thereof were, claimant corporation has failed to sustain proof of allegations that said breakdowns and the damages, if any, resulting therefrom occurring subsequent to departure of vessel from Puget Sound were caused by any alleged malperformance by libelants or their employees.

XIV.

That the oral decision of this court in this cause announced on April 18, 1949, is by this reference made a part of these findings of fact as though fully set forth herein.

Done In Open Court this 7th day of May, 1949.

/s/ JOHN C. BOWEN,
Judge.

From the foregoing Findings of Fact, the court now makes and enters herein its

Conclusions of Law

I.

That libelants are entitled to a decree against Compania Naviera Limitada, of Panama, a cor-

poration, the owner and claimant herein of the respondent, Motor Tanker Urania, her engines, tackle, apparel, furniture and equipment, and the principal upon the release and cost bond filed herein by said claimant, for the sum of $64,366.75, together with libelants' costs and disbursements as taxed herein, with interest as provided in the decree herein.

II.

That the claimant corporation is not entitled to recover from libelants under its cross-libel and said cross-libel should be dismissed with prejudice.

Done In Open Court this 7th day of May, 1949.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ RUSSELL V. HOKANSON,
Of Proctors for Libelants and
Cross-respondents.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1949.

In the District Court of the United States for the Western District of Washington, Northern Division.

In Admiralty No. 15266

E. A. BLACK, and J. J. FEATHERSTONE, co-partners, doing business under the assumed name and style of Commercial Ship Repair,

Libelants,

vs.

THE MOTOR TANKER "URANIA", her engines, tackle, apparel, furniture and equipment,

Respondent,

COMPANIA NAVIERA LIMITADA, a corporation,

Claimant,

COMPANIA NAVIERA LIMITADA, a corporation,

Cross-libelant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, co-partners, doing business under the assumed name and style of Commercial Ship Repair,

Cross-respondents.

FINAL DECREE

This cause having been heard on the pleadings and proofs before the undersigned, one of the judges of the above entitled Court, and both sides having

in due course on the 18th day of April, 1949, concluded and rested on both the libel and cross-libel herein, and the cause having been argued and submitted by the advocates for the respective parties and due deliberation having been had, and the Court being fully advised in the premises and having delivered its oral opinion at the conclusion of the trial, and having heretofore made and entered its Findings of Fact and Conclusions of Law, it is therefore

Ordered, Adjudged and Decreed that this Court makes and adopts as its Findings of Fact and Conclusions of Law the said Findings and Conclusions as heretofore entered in this cause; and it is further

Ordered, Adjudged and Decreed that the libelants, E. A. Black and J. J. Featherstone, copartners, doing business under the assumed name and style of Commercial Ship Repair, recover of and from Compania Naviera Limitada, of Panama, a corporation, the owner and claimant herein of the respondent, Motor Tanker "Urania", her engines, tackle, apparel, furniture and equipment, and the principal upon the release and cost bond filed herein by said claimant, the sum of $64,366.75, together with Libelants' costs and disbursements taxed herein in the sum of $357.30, amounting in all to the total sum of $64,724.05, with interest thereon at the rate of 6% per annum from May 5, 1949, until paid; and it is further

Ordered, Adjudged and Decreed that unless this

decree be satisfied within ten (10) days after service of a copy of this decree with notice of its entry upon proctors for claimant corporation, and upon its surety, to-wit, National Surety Corporation, which is the surety upon said claimant's release and cost bond herein, the clerk of this court without further notice shall enter summary judgment against said surety, after which execution may issue forthwith if this decree shall not have been satisfied or superseded; and it is further

Ordered, Adjudged and Decreed that the cross-libel herein of Compania Naviera Limitada, a corporation, against E. A. Black and J. J. Featherstone, copartners, doing business under the assumed name and style of Commercial Ship Repair, be and the same is hereby dismissed with prejudice; and it is further

Ordered, Adjudged and Decreed that the stipulation for costs heretofore entered on behalf of libelants be and the same is hereby discharged and released.

Done in open Court this 7th day of May, 1949.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ RUSSELL V. HOKANSON,
Of Proctors for Libelants-
Cross-Respondents.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1949.

[Title of District Court and Cause.]

EXCEPTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

Claimant and cross-libelant excepts to each of the findings of fact made and signed by the court upon the grounds that each of such findings is not supported by and is contrary to the greater weight and preponderance of the evidence and/or is not material and, insofar as it constitutes a conclusion of law, is not warranted in law, to-wit:

(1) That portion of finding No. III reading as follows: "If claimant corporation's representative, Harry F. Williams, should order such installation to be made; that pursuant to said agreement said Harry F. Williams ordered said installation."

(2) Finding No. IV, and particularly the following portions thereof:

(a) That portion thereof to the effect that all of said material, labor and services were furnished therefor in a timely, competent and workmanlike manner.

(b) That portion thereof relating to the removal of an ammunition storeroom bulkhead to the effect that removal of such bulkhead was ordered cancelled by claimant corporation or by its representative.

(c) That portion thereof relating to the performance of agreed substitute work and that the substitute work was performed in a timely, competent and workmanlike manner.

(3) Finding No. V, and particularly that por-

tion thereof to the effect that claimant corporation advised libelants that Harry F. Williams would represent said claimant corporation for all purposes in connection with the repair, alteration and renewal of said vessel by libelants.

(4) Finding No. VI, and particularly the following portions thereof:

(a) That portion thereof stating that all said additional labor, material and services as ordered were furnished by libelants to said vessel in a timely, competent and workmanlike manner.

(b) That portion thereof stating that "the price for the same was negotiated between said Harry F. Williams as owner's representative and libelants."

(c) That portion thereof stating that "$30,-191.00 was the total price agreed upon by said parties for said additional work."

(d) That portion thereof stating that "the spare parts ordered for said vessel by Harry F. Williams as owner's representative were timely furnished to said vessel by libelants."

(e) That portion thereof stating "that $6,920.46 was the total price agreed upon by said parties for said spare parts."

(5) Finding No. VII, and in particular the following portions thereof:

(a) That portion thereof stating "that the total price for additional material, labor, services and spare parts furnished said vessel by libelants is in all respects fair and reasonable."

(b) That portion thereof to the effect that any failure on the part of libelants to accomplish all

items listed in job orders was by reason of specific order of claimant corporation's representative.

(c) That portion thereof to the effect that substituted work was performed at the request of Harry F. Williams in lieu of omitted items and by negotiations on total price.

(d) That portion thereof to the effect that all items listed in spare parts invoice were furnished and properly allocated in accordance with agreement between representatives of claimant corporation and libelants.

(e) That portion thereof stating "that the total price therefor was in all respects fair and reasonable."

(6) Finding No. VIII, and in particular the following portions thereof:

(a) That portion thereof stating "that said Harry F. Williams had authority, on behalf of claimant corporation, to order said additional work, spare parts, substituted work, and to negotiate and approve the prices therefor.

(b) That portion thereof to the effect that said vessel was accepted and approved by the master prior to October 13, 1948.

(7) Finding No. IX, and particularly the following portions thereof:

(a) That portion thereof to the effect that no limitations had been imposed by claimant corporation upon the authority of Harry F. Williams to act for it in all matters connected with the repair, alteration and renewal of respondent vessel by libelants.

(b) That portion thereof to the effect that by reason of the relationship existing between libelants and claimant corporation, the actual conduct of claimant corporation and its agents, the failure of claimant corporation to communicate to libelants the limitations, if any, upon the authority of said Harry F. Williams, libelants were entitled to and did deal with and rely upon the acts of said Harry F. Williams as the acts of said claimant corporation.

(c) That portion thereof to the effect that by reason of the custom and practice with respect to the authority of marine surveyors acting as owners' representatives prevailing in the Puget Sound area at all time herein mentioned, libelants were entitled to and did deal with and rely upon the acts of said Harry F. Williams as the acts of claimant corporation.

(8) Finding No. X, and particularly:

(a) That portion thereof to the effect that there was due and owing to the libelants by claimant corporation on October 13, 1948, the sum of $64,366.75.

(b) That portion thereof to the effect that libelants have a valid claim of maritime lien upon respondent vessel for the amount due.

(9) Finding No. XI, and particularly the following portions:

(a) That portion thereof to the effect that any provision for completion of work under the original contract within eighteen working days was expressly

waived by claimant corporation on or about August 4, 1948.

(b) That portion thereof to the effect that all of said work was completed in a reasonable time and that claimant corporation has failed to sustain proof as to allegations of delay in completion of work or of damage for expense during alleged delay or loss of profits by reason of alleged delay at Winslow, Washington.

(10) Finding No. XII, and particularly the following portions:

(a) That portion thereof stating "that all work performed by libelants on the telemotor and Clayton boiler of respondent vessel was performed in a competent, workmanlike manner and in accordance with good shipyard practice.

(b) That portion thereof to the effect that claimant corporation has not sustained proof as to allegations of damage allegedly caused by libelants' malperformance concerning such work.

(11) Finding No. XLII, and particularly the following portions thereof:

(a) That portion thereof to the effect that all work performed by libelants' employees on the main engine was done at the direction of and under the supervision and control of the chief engineer.

(b) That portion thereof to the effect that libelants undertook on their own responsibility no duty to determine the extent of repairs, servicing or testing necessary, but did only what the chief engineer of said vessel directed.

(c) That portion thereof to the effect that all

work relating to main engine performed by libelants' employees was done in a competent and workmanlike manner and was accepted and approved by claimant corporation.

(d) That portion thereof to the effect that claimant corporation has failed to sustain proof as to the cause of the main engine breakdowns.

(e) That portion thereof to the effect that claimant corporation has failed to sustain proof of allegations that said breakdowns and damages were caused by any alleged malperformance of libelants or their employees.

(12) Claimant and cross-libelant excepts to finding No. XIV in that it incorporates therein the court's oral decision made on April 18, 1949, upon the grounds that said oral decision otherwise has been made a part of the record in this cause and its incorporation by reference in said findings of fact is improper, not in accordance with prescribed admiralty rules and practice, creates ambiguity, redundancy and confusion, and constitutes an unnecessary encumbrance of the record.

(13) Claimant and cross-libelant excepts to all findings of fact contained in the court's oral decision of April 18, 1949; upon the ground that such findings of fact are not supported by, and are contrary to, the greater weight and preponderance of the credible evidence.

Exceptions to Conclusions of Law

Claimant and cross-libelant excepts to each of the following conclusions of law made and signed by

the court on the ground that it is not supported by and is contrary to the greater weight and preponderance of the credible evidence, and is not warranted in law, to-wit:

(1) To conclusion of law No. I stating that libelants are entitled to a decree against respondent vessel, the Motor Tanker Urania, her engines, tackle, apparel, furniture and equipment, and against claimant corporation, Compania Naviera Limitada, the owner of said vessel, for the sum of $64,366.75, together with their costs and disbursements as taxed herein.

(2) To conclusion of law No. II dismissing the cross-libel herein with prejudice, and to the conclusion that claimant corporation is not entitled to recover thereon.

(3) Claimant and cross-libelant excepts to all conclusions of law contained in the Court's oral decision of April 18, 1949; upon the grounds that such conclusions of law are not supported by, and are contrary to, the greater weight and preponderance of the credible evidence, and that they are not warranted in law.

Exceptions to Final Decree

Claimant and cross-libelant excepts to the decree signed and entered by the court, particularly to the following portions thereof:

(a) That portion thereof awarding recovery of and from the respondent vessel Urania, and her owner and stipulator for cost and value, to-wit, claimant corporation, Compania Naviera Limitada,

and each of them, in the sum of $64,366.75, together with libelants' costs and disbursements taxed herein in the sum of $....., with interest thereon at the rate of six per cent (6%) per annum from date hereof until paid; and awarding recovery thereof against the surety of claimant corporation, National Surety Corporation, and authorizing summary judgment against said surety if said decree be not satisfied within ten days after service of copy of the decree and notice as therein provided.

(b) That portion thereof dismissing with prejudice the cross-libel herein.

Dated this 6th day of May, 1949.

MERRITT, SUMMERS & BUCEY,

/s/ CHARLES B. HOWARD,

Proctors for Claimant and Cross-Libelant.

Receipt of copy acknowledged.

The foregoing exceptions allowed this 7th day of May, 1949.

/s/ JOHN C. BOWEN,

U.S. District Judge.

[Endorsed]: Filed May 7, 1949.

[Title of District Court and Cause.]

CLAIMANT AND CROSS-LIBELANTS' REQUEST FOR FINDINGS, ETC.

To The Honorable Judge Of The Above Entitled Court:

Claimant and Cross-libelant herewith submits Proposed Findings of Fact, Conclusions of Law and Decree, which it requests to the Court to make, sign and enter herein, copies of which, marked respectively Claimant and Cross-Libelant's Proposed Findings of Fact and Conclusions of Law, and Claimant and Cross-Libelant's Proposed Decree, are hereto attached and made a part hereof.

Respectfully submitted,
MERRITT, SUMMERS &
BUCEY,
By /s/ CHARLES B. HOWARD,
Proctors for Claimant and
Cross-Libelant.

The foregoing Request, and the Proposed Findings of Fact, Conclusions of Law and Decree therein referred to, were on this day submitted to the undersigned Judge of the above entitled court, prior to the signing by said Judge of the Findings of Fact, Conclusions of Law and Decree this day signed and entered herein; and said request thereupon was refused; to which refusal Claimant and Cross-Libelant excepts, and its exceptions are allowed.

Done in open court this 7th day of May, 1949.

/s/ JOHN C. BOWEN,
U.S. District Judge.

Receipt of copy acknowledged.

[Title of District Court and Cause.]

CLAIMANT AND CROSS-LIBELANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause having duly come on for trial before the undersigned Judge of the above entitled court, sitting in Admiralty, on April 7, 1949, upon the allegations of the libel and answer thereto and the cross-libel and answer thereto, and cross-libelant having by oral trial amendment deleted items 1, 9 and 10 of paragraph IV of its cross-libel, and having, by written trial amendment, substituted a new item (1) in paragraph IV of its cross-libel, and the Court having approved all of said amendments, and said trial having been continued from time to time and having been finally concluded on April 18, 1949, and both sides having rested as to the libel and cross-libel, and the Court having heard and considered the evidence and the arguments of proctors, and being fully advised in the premises, and having on April 18, 1949, announced its oral decision, now makes the following

Findings of Fact

I.

That at all times herein mentioned libelants and

cross-respondents E. A. Black and J. J. Featherstone were and now are copartners doing business under the assumed name and style of Commercial Ship Repair, with an office and place of business at or near the port of Winslow, State of Washington.

II.

That the respondent vessel, the motor tanker "Urania", was at all times herein mentioned owned by claimant and cross-libelant, Compania Naviera Limitada, a corporation organized and existing under and by virtue of the laws of the Republic of Panama. That said vessel was at the time of the filing of the libel herein, to-wit, on the 13th day of October, 1948, lying afloat in the navigable waters of Puget Sound, at or near Winslow, Washington, and was within the jurisdiction of this Court, and that the causes herein sued upon are within the admiralty and maritime jurisdiction of this Court.

III.

That on or about the 4th day of August, 1948, at Seattle, Washington, claimant corporation, Compania Naviera Limitada, by and through Demetri Antippas, one of its officers, entered into a contract with libelants whereby libelants agreed to furnish to said motor tanker "Urania" material, labor and services for the repair, alteration and renewal of said vessel in accordance with specifications then and there agreed upon. That claimant corporation and libelants further agreed at said time and place that an additional item relating to installation on

said vessel of a chart room would be performed by libelants for the additional sum of $1500, and that the total contract price, including said additional sum, was in the agreed amount of $41,655.

IV.

That during the period beginning on or about the 4th day of August, and ending on or about the 14th day of October, 1948, the motor tanker "Urania" was at the yard of libelants and cross-respondents, under agreement for the faithful performance by them of aforesaid repairs, renewals, alterations and additions, to be completed in the period of 18 working days. That Harry F. Williams of New York was in attendance upon the vessel as owner's representative during these repairs. That said Harry F. Williams had previously acted in a similar capacity for said owner, and that the authority of the said Harry F. Williams was to supervise said repairs, renewals and alterations, and to act as intermediary between the vessel's officers and crew and the shipyard.

V.

That certain items of the original contract were not performed although charge was made for such items. That other items of work under the original contract were performed in an inefficient and unreliable manner. That the departure of the vessel from said yard was unduly delayed. That the first voyage of the vessel after such departure was interrupted by breakdowns, necessitating deviation

and towage to a port of refuge. That further and corrective repairs were required by the vessel, and that additional loss of time and expense to the owner and loss of profit on the vessel were incurred.

VI.

That during the course of work on the original contract Harry F. Williams, as owner's representative, was empowered by said claimant corporation to order from libelants such additional material, labor and services as he deemed necessary and appropriate. That as was his usual custom in representing claimant corporation, no order for major repairs, replacements or materials was placed by the said Harry F. Williams without consultation with and upon instructions from claimant corporation, and that by custom of the trade and agreement of the parties final price for such materials, labor and services was to be negotiated by claimant corporation and libelants.

VII.

That under such arrangement the said Harry F. Williams did from time to time order additional material, labor and services from libelants. That a price of $38,191.00 was submitted to the said Harry F. Williams for additional material, labor and services, which figure was objected to on October 8, 1948 by the said Harry F. Williams as being excessive. That the said Harry F. Williams advised that said submitted price was excessive in the

amount of $6425.00. That a figure of $6920.46 was on October 8, 1948 submitted by libelants to the said Harry F. Williams as the price for spare parts, which figure was likewise objected to as excessive, since said price included a charge already figured in upon the original agreed contract price in the amount of $900.00. That the said Harry F. Williams did not approve either of said figures, but instead proceeded to New York to advise claimant corporation with regard thereto. That the sum of $31,766.00 does represent the reasonable value of the extra repairs and alterations furnished by the libelants herein, and the sum of $6,020.46 represents the reasonable cost of spare parts actually furnished by libelants to respondent vessel, as established by a preponderance of the evidence herein.

VIII.

That on or about the 8th day of October, 1948, the said Harry F. Williams, as owner's representative, did sign invoices covering the figures submitted by libelants, and referred to in the previous paragraph, but that the approval contained thereon was limited to work having been done and was not intended as approval as to price. That it was understood that this approval did not relieve the libelants from responsibility arising from latent defects which might later develop as the result of materials and spare parts furnished and labor performed by employees of libelants in the repair and alteration of the vessel. That after the said Harry

F. Williams left for New York work was still being carried out by libelants on the motor tanker "Urania", including work under the original contract, which work was not in fact completed until October 13, 1948.

IX.

That on or about the 4th day of October, 1948, claimant corporation made a payment of $25,000 as a progress payment. That said progress payment was not provided for by the original contract, and was not in any way required to be made by claimant corporation.

X.

That work performed by employees of libelants on the Clayton boiler, telemotor, and main engine was not completed in a competent and workmanlike manner, and that the testing done was not in accordance with the recommendations of the manufacturers of the parts thereof, and that the tests made were ineffective to disclose defects in said parts.

XI.

That as a result of the failure of libelants to perform their obligations to repair said motor tanker "Urania", a breakdown occurred off Port Angeles on the 16th day of October, 1948, requiring additional repairs and causing delay to the vessel and resulting expense and loss of profits. That subsequent breakdowns occurred at sea near Manzanillo, Mexico, on the 26th day of October, 1948, and again while said motor tanker was en route from

Manzanillo to San Pedro, to-wit, on the 5th day of November, 1948, with like results. That the breakdown occurring off Port Angeles, Washington, on October 16, 1948, was caused by failure of the telemotor steering system, attributable to inefficient services, unreliable labor, and defective materials furnished in the overhaul of said system by cross-respondents' ship repair yard; that the subsequent breakdowns of the vessel at sea on October 26th and November 5th, 1948, were attributable to a breakdown of the main engine caused by inefficient services, unreliable labor and defective material furnished by cross-respondent during the course of repairs and overhaul to the vessel's main engine at cross-respondent's Winslow shipyard in August, September and October, 1948.

XII.

That as a result of said failure of libelants to perform their obligation to repair said vessel in a competent and workmanlike manner, cross-libelant suffered damages as follows:

(1)	Repairs to Clayton boiler and generator at Long Beach	$ 678.86
(2)	Removal of ammunition bulkhead not effected	275.00
(3)	Expense incurred during delay at Winslow, Washington (16 days at $246 per day)	3936.00
(4)	Loss of profits during delay at Winslow, Washington (16 days at $250 per day)	4000.00

(5)	Telemotor repairs at Port Angeles, Washington (including 2 men, one surveyor, and air transportation) . .	262.51
(6)	Deviation to Port Angeles, Washington, for telemotor repairs	310.00
(7)	Towage after breakdown from Manzanillo, Mexico, to San Pedro, California	4286.00
(8)	Engine repairs at Long Beach, California	4475.00
(9)	Additional fuel consumed on account of deviation and delay for repairs, and resupplied at San Pedro, California	974.00
(10)	Disbursements (agency) at Manzanillo	969.00
(11)	Disbursements (agency) at Los An-Angeles	1911.00
(12)	Expenses of vessel during repairs at Long Beach, California	7252.00
(13)	Loss of profits during corrective repairs (28 days at $250 per day)	7000.00

That the amounts shown opposite each of the above subparagraphs represent the reasonable and actual cost, expense or loss sustained by the cross-libelant, proximately resulting from the negligence, inefficient service, unreliable labor, delay, and defects in material furnished by cross-respondents' shipyard as established by the preponderance of the evidence.

Done in open court this .... day of May, 1949.

. . . . . ,

U.S. District Judge.

From the foregoing Findings of Fact the Court now makes and enters herein its

Conclusions of Law

I.

That libelants are entitled to a decree against claimant corporation, the owner of said vessel, for the sum of $54,441.46. That the aforesaid sum represents the agreed amount of $41,655.00 for contract repairs and alterations, plus the reasonable value of the extra repairs and alterations in the sum of $31,766.00, plus the reasonable value of spare parts furnished to the vessel by the libelants in the sum of $6020.46, making a total of $79,441.46, from which sum is deducted the progress payment of $25,000 voluntarily made by the claimant to libelants herein.

II.

That cross-libelant is entitled to a decree against cross-respondents in the amount of $36,329.37 for damages suffered by cross-libelant resulting from the failure of cross-respondents to perform their duty to repair, alter and renew the respondent vessel in a competent and workmanlike manner.

III.

That the damages awarded to claimant and cross-libelant may be offset against the amount adjudged to be due libelants from claimant.

Done in open court this .... day of May, 1949.

....,

U.S. District Judge.

Presented by:

/s/ CHARLES B. HOWARD,
Of Proctors for Claimant
Cross-Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1949.

[Title of District Court and Cause.]

CLAIMANT AND CROSS LIBELANT'S PROPOSED FINAL DECREE

This cause having been heard on the pleadings and proofs before the undersigned, one of the judges of the above entitled Court, and both sides having in due course on the 18th day of April, 1949, concluded and rested on both the libel and cross-libel herein, and the cause having been argued and submitted by the advocates for the respective parties, and due deliberation having been had, and the Court being fully advised in the premises and having delivered its oral opinion at the conclusion of the trial, and having heretofore made and entered its Findings of Fact and Conclusions of Law, it is therefore

Ordered, Adjudged and Decreed that this Court makes and adopts as its Findings of Fact and Conclusions of Law the Findings and Conclusions as heretofore proposed by the claimant and cross-libelant herein and entered in this cause; and it is further

Ordered, Adjudged and Decreed that the libelants, E. A. Black and J. J. Featherstone, copartners doing business under the assumed name and style of Commercial Ship Repair, recover of and from Compania Naviera Limitada, of Panama, a corporation, the owner and claimant herein of the respondent Motor Tanker "Urania", her engines, tackle, apparel, furniture and equipment, and the principal upon the release and cost bond filed herein by said claimant, the sum of $54,441.46; and it is further

Ordered, Adjudged and Decreed that cross-libelant, Compania Naviera Limitada, a corporation, recover of and from E. A. Black and J. J. Featherstone, copartners doing business under the assumed name and style of Commercial Ship Repair, the sum of $36,329.37, together with cross-libelant's costs and disbursements taxed herein; and it is further

Ordered, Adjudged and Decreed that damages awarded to claimant and cross-libelant may be offset against the amount adjudged to be due libelants from claimant; and it is further

Ordered, Adjudged and Decreed that unless this decree be satisfied within ten (10) days after service of a copy of this decree with notice of its entry upon proctors for claimant corporation, and upon its surety, to-wit, National Surety Corporation, which is the surety upon said claimant's release and cost bond herein, the Clerk of this Court, without further notice, shall enter summary judgment against said

surety, after which execution may issue forthwith if this decree shall not have been satisfied or superseded.

Done in open court this .... day of May, 1949.

.....,
U.S. District Judge.

Presented by:

/s/ CHARLES B. HOWARD,
Of Proctors for Claimant and Cross-libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1949.

[Title of District Court and Cause.]

CLAIMANT'S AND CROSS-LIBELANT'S MOTION FOR AN ORDER FIXING COST AND SUPERSEDEAS BOND ON APPEAL

Comes now the claimant and cross-libelant corporation, Compania Naviera Limitada, of Panama, and in contemplation of taking an appeal from the Final Decree in the above entitled cause made and entered by this court on the 7th day of May, 1949, does hereby move the court for an order approving the Release and Cost Bond heretofore filed herein by claimant on October 15, 1948, with claimant corporation as principal and the National Surety Corporation as surety, in the sum of $80,000.00, to stand as a Cost and Supersedeas Bond on the above

appeal or, in the alternative, that the court enter an order fixing the amount of Cost and Supersedeas Bond to be posted by claimant and cross-libelant on appeal from said Final Decree herein.

This motion is based upon the records and files in this cause and upon the affidavit of Charles B. Howard attached hereto.

MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant-Cross
Libelant.

United States of America,
State of Washington,
County of King—ss.

Charles B. Howard, being first duly sworn, on oath deposes and says:

That I am an attorney at law and a member of the firm of Merritt, Summers & Bucey, proctors for the claimant and cross-libelant in this cause.

That since entry of Final Decree in said cause on May 7, 1949, the claimant-cross libelant corporation, Compania Naviera Limitada, of Panama, has instructed and authorized the firm of Merritt, Summers & Bucey to take and prosecute an appeal from the Final Decree entered by the trial court in this cause to the Circuit Court of Appeals for the Ninth Circuit. That Notice of Appeal and Assignment of Errors will be served and filed in said cause by the 16th day of May, 1949.

That it is necessary to have the amount of Supersedeas Bond determined and approved at this time in order to avoid execution on the judgment in the Final Decree during the pendency of the appeal. That the amount of said Cost and Release Bond filed herein on October 15, 1948, is $80,000.00 and that said bond is sufficient in amount and adequate in its terms to serve as a Cost and Supersedeas bond on appeal, since the amount of the judgment awarded by the Final Decree, including costs, is in the sum of $64,724.05, with interest thereon at the rate of six per cent per annum from May 5, 1949, until paid.

/s/ CHARLES B. HOWARD.

Subscribed and sworn to before me this 11th day of May, 1949.

[Seal] /s/ G. H. BUCEY,

Notary Public in and for the State of Washington, residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed May 11, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above Entitled Court:

To E. A. Black and J. J. Featherstone, copartners doing business under the assumed name and style of Commercial Ship Repair, being the Libelants and Cross-Respondents above named, and

To Todd, Hokanson & White (formerly Langlie & Todd), Proctors for Libelants and Cross-Respondents:

Notice Is Hereby Given that Compania Naviera Limitada, a corporation, claimant and cross-libelant hereinabove named, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from that certain final decree in the above entitled action entered upon the 7th day of May, 1949, by the United States District Court for the Western District of Washington, Northern Division, wherein the said libelants were awarded judgment on the claims in their libel against Compania Naviera Limitada, of Panama, a corporation, as the owner and claimant of the respondent Motor Tanker "Urania" in the sum of $64,366.75, together with libelants' costs and disbursements taxed herein in the sum of $357.30, amounting in all to the total sum of $64,724.05, with interest thereon at the rate of six per cent (6%) per annum from May 5, 1949, until paid, and wherein the cross-libel of Compania

Naviera Limitada, a corporation, against E. A. Black and J. J. Featherstone, co-partners doing business under the assumed name and style of Commercial Ship Repair, was dismissed with prejudice.

Dated this 16th day of May, 1949.

MERRITT, SUMMERS & BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant and Cross-Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 16, 1949.

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the Claimant and Cross-libelant in the above entitled and numbered cause and files the following Assignment of Errors upon which it will rely in presentation of the appeal to the United States Court of Appeals for the Ninth Circuit from the Final Decree made and entered by the Honorable John C. Bowen, District Court Judge of the United States District Court for the Western District of Washington, Northern Division, on the 7th day of May, 1949.

The trial court erred as follows:

(1) In finding that Harry F. Williams was empowered by claimant corporation to represent said

corporation for all purposes in connection with the repair, alteration and renewal of respondent vessel by libelants at their shipyard at Winslow, Washington.

(2) In finding that, by reason of the actual conduct of claimant corporation and the failure of claimant corporation to communicate limitations upon the authority of Harry F. Williams to libelants, and the custom and practice in the Puget Sound area with respect to the authority of marine surveyors acting as owners' representatives, the libelants were entitled to deal and rely upon the acts of Harry F. Williams with respect to the accounts of libelants as the acts of claimant corporation.

(3) In finding that Harry F. Williams did approve the accounts of libelants as to the amounts and prices shown on the invoices for contract work, additional work and spare parts furnished to the respondent vessel.

(4) In finding that the prices on said invoices for additional material, labor, services and spare parts furnished respondent vessel by libelants were in all respects fair and reasonable.

(5) In finding that the charge for spare boiler coils set forth in the spare parts invoice (Libelants' Exhibit #6) was properly allocated to spare parts; and in failing to find that such item was a duplication of charges under additional work charges (Libelants' Exhibits #4 and #5) on the Clayton boiler.

(6) In finding that work performed by libelants on the Clayton boiler aboard respondent vessel was performed in a competent, workmanlike manner and in accordance with good shipyard practice; and in failing to find to the contrary, and that the failure in operation and the damage sustained to the said Clayton boiler was caused by malperformance or nonperformance of libelants' obligations under the additional work specifications.

(7) In finding that work performed by the libelants on the telemotor steering system aboard the respondent vessel was performed in a competent, workmanlike manner and in accordance with good shipyard practice; and in failing to find that the breakdown of said telemotor system near Port Angeles, Washington, was due to failure of the libelants to properly perform their obligations under the original contract specifications to open up, test and adjust the telemotor, and report any deficiencies found therein to claimant's representative.

(8) In finding that all work done on the main engine of respondent vessel, save that work done by riggers, was done at the direction of and under the supervision and control of the respondent vessel's chief engineer, and that libelants (cross-respondents) undertook no duty on their own responsibility to determine the extent of repairs, servicing or testing necessary, but did only what the chief engineer directed in pursuant to contract stipulation; and in finding that all of the work performed by libelants' employees on the main en-

gine of the respondent vessel was done in a competent and workmanlike manner, and that it was accepted and approved by claimant corporation (cross-libelant).

(9) In finding that claimant corporation (cross-libelant) failed to sustain the burden of proof as to the cause of the main engine breakdowns off the west coast of Mexico on October 26 and November 5, 1948; and in the failure of the Court to find that said breakdowns were caused by defective workmanship and material furnished to respondent vessel by libelants under the original contract and additional work specifications.

(10) In the failure of the trial Court to find that the breakdowns of the main engine on October 26 and November 5, 1948, were proximately caused by the malperformance or nonperformance of libelants' obligations under the additional work specifications on respondent vessel by reason of the improper testing and negligence in repairing or failure to repair leaks existing in the lubricating oil cooler installed on said main engine, resulting in salt water contamination of the lubricating oil which, in turn, caused galling of the vertical gears on the main engine and resulted in said breakdowns of the main propulsion engine on the respondent vessel while at sea.

(11) In ruling that the lubricating oil cooler offered by cross-libelant on rebuttal as an exhibit (cross-libelant's identification A-29) had not been properly identified and was not admissible in evi-

dence, for the purpose offered, to establish the inaccuracy of opinions expressed by expert witnesses called by cross-respondents in an effort to prove that leaks could not have existed in this type of lubricating oil cooler at the particular points claimed by cross-libelant through its witnesses. The offer of this identification A-29 was objected to by counsel for cross-respondent as follows:

"Mr. Hokanson: At this point, with reference to the attempt to introduce this exhibit into evidence, I would like to call the Court's attention to an order which the Court signed on the 9th day of March, 1949, in this cause wherein on Page 3 of the order, the cross-libelants are directed under paragraph 2:

"To produce each of the following objects at the offices of its proctors, Messrs. Merritt, Summers & Bucey, 840 Central Building, Seattle, Washington, on or before the 14th day of March, 1949, and to permit libelants-cross-respondents, their proctors, technical advisers and/or photographers, to inspect and photograph each of said objects:

"(a) Any and all engine parts or other parts of the Motor Tanker 'Urania' removed from said vessel after October 15, 1948, for the purposes of introducing the same into evidence as exhibits upon the trial of the above entitled cause."

"I submit that had counsel intended to introduce this exhibit in this cause, he was under obligation to allow us the opportunity to inspect this under

the terms of this order, and that it is improper at this late stage of the trial to undertake identification and introduction of it.

"Our witnesses have all been dismissed. This matter was gone over when Mr. Antippas was here. He had an opportunity when he was here to identify it. We were never given the opportunity to see the exhibit. We were informed that it was allegedly here—the alleged cooler was here at about ten minutes of twelve on Thursday, just prior to the resting of cross-libelant's case.

"No offer was made to produce it at the time we understook to introduce a cooler in lieu of it to establish the type of construction, and I submit, your Honor, that it is rather late in the case now, particularly in view of the order signed, to undertake to introduce what is alleged to be the cooler from the Urania, which in any case must be hearsay, because there is not present, to my knowledge, anyone from the vessel to establish that is the cooler which is in issue here which was on this vessel in October, 1948, and has been on the vessel at all times since.

"The proof is such that I submit counsel is wasting the Court's time in undertaking to identify it now.

* * *

"The Court: I do not think that the exhibit has been sufficiently identified to be admitted over objection.

"One reason I think it is lacking in identification necessary to meet the objection is that it should have had some person who took it from the Urania, identified the identity of it with the identity of the article shipped by the carrier which is alleged to have carried it, and then the identity should have been unmistakably and properly connected up from the time it was on the vessel until it arrived here in court, when it did arrive.

"I do not think, over objection, that that has been sufficiently done.

"I also feel the possibility of there being some prejudice to the cross-respondents in connection with it. I think if it had been produced in accordance with the Court's order in the proper time and at a time when they could make use of and gain information from it, they might have had an opportunity to have made a more timely inspection of it.

"That last observation causes the Court to feel that the possible prejudice to cross-respondents makes it important for the Court to require, since the objection has been made by cross-respondents, that the exhibit be properly and legally identified.

"The objections of cross-respondent to the identification of A-29 is and are sustained.

"Mr. Howard: If the Court please, would you allow an exception on that ruling?

"The Court: Exception allowed.

"Mr. Howard: At this time, I will also offer Respondent's Exhibit A-30 for Identification in support of the offer which has heretofore been made on A-29.

"Mr. Hokanson: I object to the offer.

"The Court: Sustained.

"Mr. Howard: An exception, if the Court please.

"The Court: Allowed.

"Mr. Howard: At this time, I again renew my application on behalf of cross-libelant that this evidence be received in the record under Admiralty Rule 46-B, over objection that has been made and ruled upon by the Court."

The offer of proof as to this exhibit, made by proctor for cross-libelant, was as follows:

"Mr. Howard: I make an offer of proof by this exhibit, which has been marked for identification, that the gasket and cover do not cover the soldered seam between the core and the housing of the Harrison type heat exchanger model aboard the tanker Urania, so that the assumption which the witness Mr. Gilmore was making and which, if the Court please, was also made by the witness Blumberg who testified Saturday and this morning, that leaks could not occur because of the gasket covering the seam—I offer to prove by this exhibit that that is a physical impossibility, and that the heat exchanger would speak for itself in that respect."

(12) In ruling that photostatic copy of charter party on respondent vessel (cross-libelant's identi-

fication A-28) identified by witness Demetri Antippas, and his testimony as to profits under such charter party, which identification and testimony were offered by cross-libelant as proof of earnings of the vessel on charter voyage after the voyage upon which the breakdown occurred, were not admissible in support of cross-libelant's claim for loss of profits during periods of loss of use of the respondent vessel due to breakdowns alleged to have been caused by defective workmanship and materials furnished by libelants. Offer of identification A-28 and testimony in support thereof were objected to by one of cross-respondents' proctors as follows:

"Mr. White: May we object upon the ground, first, that there is no foundation laid that a boat could possibly have been chartered here which would support such testimony as this; and secondly, that this was a different time, under different conditions, with different parties, carrying a different product.

"I submit to the Court that under those circumstances this could have practically no weight as far as showing any loss of profits is concerned.

* * *

"Mr. White: I object to that, your Honor, on the ground that what the charter market might have been on the East Coast in December would have no bearing upon the issues in this case, since if there is any loss of profits it is during the month of October, around there.

"The Court: That objection is sustained.

* * *

"Mr. White: I object to that, your Honor, on the grounds as stated before; different conditions, different product, different time, different parties involved.

"The Court: The objection is sustained as to this particular proposed charter.

"Mr. Howard: I would like to make a very brief statement. This vessel broke down on the West Coast of the United States or Mexico. Obviously, it would not be possible to charter a vessel during the period it is broken down.

"We submit that we should be entitled to prove by this witness what the vessel earned when it did get back to the East Coast after repairs had been made, because we obviously could not testify as to the earning power of the vessel during the period it was broken down.

"The Court: You could prove by some witness who knows what the charter market was for a vessel of this type during the period of the breakdown.

"The objection is sustained and the Court will disregard the statement of the witness regarding the profits of this charter.

"Mr. Howard: At this time, for the purpose of the record, I offer Identification A-28.

"Mr. White: That is objected to on the grounds previously announced.

"The Court: Sustained. Admission is denied."

(13) In finding that cross-libelant was not entitled to recover any damages claimed in the cross-libel as amended at the time of trial; and in denying to cross-libelant its damages in the sum of $36,-329.37 against cross-respondents as shown by the evidence, for the cause of corrective repairs, towing services, additional vessel operating expenses, loss of profits, additional fuel consumed, and agency expenses incurred as a result of the several breakdowns of the vessel due to defective workmanship and materials furnished by libelants.

(14) In entering decree in favor of libelants against claimant for the sum of $64,366.75 plus costs and disbursements taxed.

Dated this 16th day of May, 1949.

MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant and
Cross-Libelant.

Receipt of copy acknowledged.
[Endorsed]: Filed May 16, 1949.

[Title of District Court and Cause.]

COST AND SUPERSEDEAS BOND ON APPEAL

Know All Men By These Presents:

That we, Compania Naviera Limitada, of Panama, a corporation, Claimant and Cross-Libelant in

the above cause, as Principal, and National Surety Corporation, a corporation authorized to transact a surety business within the State of Washington, as Surety, are held and firmly bound unto E. A. Black and J. J. Featherstone, copartners doing business as Commercial Ship Repair, Libelants and Cross-Respondents in said cause, in the sum of Eighty Thousand Dollars ($80,000.00), to be paid to said libelants in lawful money of the United States, for the full and complete payment of which well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Whereas, said above named Libelants in this cause have heretofore filed libel in rem against the above named respondent vessel, for reasons in said libel alleged, and have caused process to be issued and served, and have caused said vessel to be duly attached thereunder; and

Whereas, in the time and manner provided by law, Compania Naviera Limitada, of Panama, a corporation, thereafter appeared as Claimant of said respondent vessel, and procured release of said vessel from attachment by filing in said cause a certain Release and Cost Bond to the United States Marshal, in the sum of $80,000.00, upon which said bond the National Surety Corporation was surety; and

Whereas, Claimant thereafter filed Answer to said libel, and contested the asserted right of said libelants to recover upon said libel; and Claimant

did also file Cross-Libel herein, seeking recovery of damages herein against Libelants as Cross-Respondents, for reasons in said Cross-Libel alleged, which asserted right of Cross-Libelant to recover was contested by Answer of Cross-Respondents thereafter filed herein; and

Whereas, after trial upon all issues in said cause, both on the libel and the Cross-Libel, a Final Decree was entered in said cause on the 7th day of May, 1949, awarding to said libelants judgment and decree against Compania Naviera Limitada, of Panama, a corporation, the owner and claimant of respondent vessel and the principal upon the cost and release bond filed herein, in the sum of $64,366.75, together with Libelants' costs and disbursements herein taxed in the sum of $357.30, amounting in all to the total sum of $64,724.05, with interest thereon at the rate of six per cent per annum from May 5, 1949, until paid; and

Whereas, upon motion and application of Claimant, Cross-Libelant to the above entitled court, the amount of cost and supersedeas bond on appeal to the United States Court of Appeals for the Ninth Circuit was fixed in the sum of $80,000.00, effective to stay execution of said judgment and decree;

Now, Therefore, the condition of this obligation is such that if said claimant, Compania Naviera Limitada, of Panama, a corporation, as Principal, shall pay the judgment and decree heretofore entered herein, together with any costs, damages and interest that may be awarded against it on appeal

or dismissal thereof or failure to make its plea good; or if said claimant shall perfect and prosecute an appeal with effect and shall abide by and answer and pay the money awarded by whatever decree may be rendered by any appellate court on appeal in the above entitled cause, or whatever decree may be rendered by the District Court on the mandate of said appellate court, including all damages, costs and interest awarded thereby; then this obligation shall be void, otherwise it shall remain in full force and effect.

Signed and Sealed this 17th day of May, 1949.

COMPANIA NAVIERA
LIMITADA, of Panama,
a corporation,
Claimant and Cross-Libelant.
MERRITT, SUMMERS &
BUCEY,
By MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
As Its Proctors.
Principal.
NATIONAL SURETY
CORPORATION,
[Seal] By /s/ R. R. GRONIGER,
Its Attorney-in-Fact.
Surety.

The foregoing bond is approved as to form, amount and surety, and is hereby accepted as suf-

ficient cost and supersedeas bond staying execution in the above entitled cause pending determination of appeal and upon such appeal.

Notice of filing said bond is hereby waived.

Dated this 17th day of May, 1949.

TODD, HOKANSON & WHITE,
By /s/ RUSSELL V. HOKANSON,
Proctors for Libelants and
Cross-Respondents.

The foregoing bond is approved both as a bond staying execution prior to appeal and as a cost and supersedeas bond upon appeal.

Dated this 17th day of May, 1949.

/s/ JOHN C. BOWEN,
District Judge.

[Endorsed]: Filed May 17, 1949.

[Title of District Court and Cause.]

STIPULATION AND ORDER RE RELEASE AND COST BOND

It is hereby stipulated and agreed that the Release and Cost Bond in the sum of $80,000.00 heretofore filed herein on the 15th day of October, 1948, with claimant Compania Naviera Limitada, of Panama, as Principal, and the National Surety Corporation, as Surety, shall be released and discharged and the surety thereon exonerated upon

the approval by the District Court herein of Cost and Supersedeas Bond on Appeal in the sum of $80,000.00 and the filing of said bond with the Clerk of said court; and that an order may be entered by the District Court, upon compliance with the aforesaid conditions, providing for the discharge and release of the Cost and Release Bond and the exoneration of the surety thereon.

E. A. BLACK and J. J. FEATHERSTONE, co-partners doing business under the assumed name and style of Commercial Ship Repair,
Libelants and Cross-Respondents,
TODD, HOKANSON & WHITE,
By /s/ RUSSELL V. HOKANSON,
Proctors for Libelants and Cross-Respondents.

COMPANIA NAVIERA LIMITADA, of Panama, a corporation,
Claimant and Cross-Libelant,
MERRITT, SUMMERS & BUCEY,
By /s/ CHARLES B. HOWARD,
Proctors for Claimant and Cross-Libelant.

ORDER

Upon the basis of the foregoing stipulation, and it further appearing from the records and files herein that a Cost and Supersedeas Bond in the sum of $80,000.00 with sufficient surety has this date been approved and filed herein, it is hereby

Ordered and Adjudged that the Release and Cost Bond heretofore filed herein on the 15th day of October, 1948, in the sum of $80,000.00 with Claimant Compania Naviera Limitada, of Panama, a corporation, as Principal, and the National Surety Corporation, as Surety, be and the same is hereby released and discharged and the surety on said Release and Cost Bond is exonerated from any and all liability thereunder.

Done in open court this 17th day of May, 1949.

/s/ JOHN C. BOWEN,
District Judge.

Presented by:

/s/ CHARLES B. HOWARD,
Of Proctors for Claimant-
Cross Libelant.

Approved:

/s/ RUSSELL V. HOKANSON,
Of Proctors for Libelants-
Cross Respondents.

[Endorsed]: Filed May 17, 1949.

[Title of District Court and Cause.]

STIPULATION AS TO RECORD AND APOSTLES ON APPEAL

In accordance with Subdivision 4, Rule 5, of the Rules in Admiralty, United States Circuit Court

of Appeals for the Ninth Circuit, it is hereby Stipulated and Agreed by and between the parties to the above cause, through their proctors of record, with respect to the contents of the record and Apostles on Appeal to be prepared by the Clerk of the District Court for transmittal to the Circuit Court of Appeals, as follows:

(A) That the Clerk of the District Court shall omit from the record and Apostles on Appeal to be transmitted to the Circuit Court of Appeals the following pleadings:

District Court Pleading No. 2:
Praecipe.
District Court Pleading No. 8:
Claimant's Motion for Reduction of Bond.
District Court Pleading No. 9:
Note for Calendar on Claimant's Motion for Reduction of Bond.
District Court Pleading No. 10:
Exceptions to Libel.
District Court Pleading No. 11:
Note for Calendar on Exceptions to Libel.
District Court Pleading No. 12:
Order Denying Motion for Reduction of Bond.
District Court Pleading No. 14:
Motion to Set Cause for Trial.
District Court Pleading No. 16:
Praecipe for Citation.
District Court Pleading No. 17:
Cross-Libelant's Motion for Stay under Rule 50.

District Court Pleading No. 18:

Note for Calendar on Motion for Stay.

District Court Pleading No. 19:

Affidavit Resisting Motion for Stay.

District Court Pleading No. 20:

Exceptions to Cross Libel.

District Court Pleading No. 21:

Notice of Presentation of Exceptions.

District Court Pleading No. 22:

Counter Affidavit on Cross-Libelant's Motion for Stay.

District Court Pleading No. 23:

Counter Affidavit on Exceptions of Cross-Respondents to Cross-Libel.

District Court Pleading No. 25:

Marshal's Return on Citation.

District Court Pleading No. 26:

Memorandum of Authorities of Cross-Libelant on Motion for Stay.

District Court Pleading No. 27:

Cross-Respondents' Memorandum of Authorities Exceptions to Cross-Libel.

District Court Pleading No. 28:

Cross-Respondents' Memorandum of Authorities in Response to Motion for Stay.

District Court Pleading No. 29:

Order on Cross-Respondents' Motion for Stay.

District Court Pleading No. 30:

Order on Cross-Respondents' Exceptions.

District Court Pleading No. 31:

Notice of Taking Deposition De Bene Esse of Andrew Beis.

District Court Pleading No. 32:

Notice of Taking Deposition De Bene Esse of P. Baxevanis.

District Court Pleading No. 36:

Note for Calendar on Motion for Production.

District Court Pleading No. 38:

Notice of Taking Depositions on Behalf of Cross-Libelant.

District Court Pleading No. 39:

Notice of Taking Deposition of N. A. Cross.

District Court Pleading No. 40:

Notice of Taking Depositions on Behalf of Cross-Libelant.

District Court Pleading No. 44:

Note for Calendar on Motion for Production.

District Court Pleading No. 45:

Notice of Taking Deposition on Behalf of Cross-Libelant.

District Court Pleading No. 47:

Praecipe by Libelants for Subpoena to Williams.

District Court Pleading No. 52 and 52a:

Exhibits and deposition of W. Bruce Bryant.

District Court Pleading No. 53:

Marshal's Return on Subpoena—Northern California.

District Court Pelading No. 54:

Praecipe for Subpoenas to Craig Wallace and S. A. Lund.

District Court Pleading No. 55:

Marshal's Return on Subpoenas to Craig Wallace and S. A. Lund.

District Court Pleading No. 55a:

Trial Brief of Claimant and Cross-Libelant.

District Court Pleading No. 55b:

Libelants' Memorandum of Authorities on Libel.

District Court Pleading No. 55c:

Libelants' Memorandum of Authorities, Supplemental.

District Court Pleading No. 56:

Praecipe for Subpoena to S. A. Lund.

District Court Pleading No. 57:

Libelants' - Cross - Respondents' Supplemental Memorandum of Authorities.

District Court Pleading No. 58:

Marshal's return on subpoena.

District Court Pleading No. 61:

Notice of Presentation of Findings of Fact, Conclusions of Law and Final Decree.

District Court Pleading No. 68:

Note for Calendar on Claimant, Cross-Libelant's Motion for Order Fixing Supersedeas Bond.

(B) That the Clerk of the District Court shall omit from the record and Apostles on Appeal to be transmitted to the Circuit Court of Appeals the following exhibits:

Libelants' Exhibit No. 9:

Time Cards for Personnel in the Shipyard.

Libelants' Exhibit No. 16:

Heat Exchanger (offer of exhibit withdrawn).

Claimant's Exhibit No. 11:

Invoice for Freight Charge on Spare Parts to Manzanillo (offer of exhibit withdrawn).

Claimant's Exhibit No. 18:

Letter from Newell of Union Diesel Engine Company to Merritt, Summers & Bucey (objection to offer sustained).

Claimant's Exhibit No. 19:

Large diagram of main engine aboard "Urania" (not used illustratively or for descriptive purposes during trial).

(C) That, except as hereinabove enumerated, all original pleadings on file herein, together with all testimony and all original exhibits offered in evidence by any of the parties, including exhibits identified and offered but refused admission in evidence, shall be transmitted by the Clerk of the District Court as a part of the record and Apostles on Appeal to the Circuit Court of Appeals.

(D) That claimant and cross-libelant's identification A-29, being a piece of machinery offered but not admitted in evidence, may be boxed or crated and transmitted to the Circuit Court of Appeals, unattached to the record or Apostles on Appeal in this cause.

(E) That in printing said record or Apostles on Appeal it shall not be necessary to print the following items or portions thereof:

(1) The full title of pleadings, orders and other papers, the verifications thereof and the full file marks; it being sufficient that the Apostles on Appeal, as printed, contain a plain designation of such pleadings, orders and other papers, together with a notation of the dates when they were filed.

(2) The opening statements of proctors for any of the parties to this cause and the oral arguments of any of the proctors made at the close of the trial.

(F) That the following original exhibits or documents admitted, or identified but not admitted, in evidence as exhibits, which will be sent up by the Clerk of the District Court to the Circuit Court of Appeals as a part of the record or Apostles on Appeal need not be printed, but said exhibits or identifications may be considered by the appellate court in their original form, subject to the approval of the Circuit Court of Appeals for the Ninth Circuit.

Libelants' Exhibit No. 10:

Records of stores issued from shipyard stock to tanker "Urania."

Libelants' Exhibit No. 11:

Invoices on libelants' outside purchases for tanker "Urania."

Libelants' Exhibit No. 13:

Specifications of Sparkman & Stevens for conversion of tanker.

Claimant's Exhibit No. 4:

Specifications of Sparkman & Stevens for conversion.

Claimant's Exhibit No. 8:

Pilothouse log book, tanker "Urania."

Claimant's Exhibit No. 9:

Invoices and statements for expenditures at Manzanillo, Mexico.

Claimant's Exhibit No. 10:

Statements of Manzanillo agent for tanker "Urania."

Claimant's Exhibit No. 12:

Engine room log book, tanker "Urania."

Claimant's Exhibit No. 13:

Continuation of engine room log book, tanker "Urania."

Claimant's Exhibit No. 16:

Instruction book and manual of Union Diesel Engine Company.

Claimant's Exhibit No. 24:

Invoices and statements on Los Angeles disbursements.

Claimant's Exhibit No. 29:

Lubricating oil cooler (identification only).

(G) That this stipulation and the order of court entered pursuant thereto shall be filed and certified up with the record to the Circuit Court of Appeals for the Ninth Circuit.

Dated this 6th day of June, 1949.

TODD, HOKANSON & WHITE,
/s/ RUSSELL V. HOKANSON,
Proctors for Libelants and Cross-Respondents.

MERRITT, SUMMERS & BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant and Cross-Libelant.

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

ORDER ON RECORD AND APOSTLES ON APPEAL

Upon motion of claimant-cross libelant as the appellant in this cause, and in accordance with stipulation signed by all parties to this cause on June 6, 1949, and filed herein; it appearing to the court proper;

It is hereby Ordered that, in connection with the appeal of claimant-cross libelant to the United States Circuit Court of Appeals for the Ninth Circuit in said cause, all original pleadings, all original exhibits and identifications, original depositions, together with exhibits related thereto, and the original of the court reporter's transcript of the testimony and proceedings at the trial, excepting those items or portions thereof provided and set forth in said stipulation of proctors dated June 6, 1949, to be omitted from the record and Apostles on Appeal, shall be withdrawn by the Clerk of this court, and transmitted by the Clerk of this court, in lieu of copies, and as a part of the record and Apostles on Appeal in said cause.

Done in open court this 6th day of June, 1949.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ CHARLES B. HOWARD,
Of Proctors for Claimant-
Cross Libelant as Appellant.

Approved for entry:

TODD, HOKANSON & WHITE,
/s/ RUSSELL V. HOKANSON,
Proctors for Libelants-Cross
Respondents as Appellees.

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

PRAECIPE

To Millard W. Thomas, Clerk of the United States District Court for the Western District of Washington, Northern Division:

Utilizing transcript of testimony now being prepared by the court reporter and to be filed herein, you are hereby requested to prepare in the above entitled cause record or Apostles on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as required by Rule 5 of the Admiralty Rules of said appellate court, and containing the items specified in this praecipe and/or in the stipulation as to the record or Apostles on Appeal filed herein.

(A) Caption showing proper style of the court and showing title and number of the cause in which was entered the final decree from which this said appeal is taken.

(B) Introductory statement showing

(1) Time of commencement of the cause;

(2) Names of all parties including the parties to both the libel and the cross-libel:

(3) Names and addresses of all proctors;

(4) Dates of filing various pleadings;

(5) Date of arrest or attachment of the respondent vessel;

(6) Date of release of respondent vessel with the amount of the bond and the names of the principal and surety thereon;

(7) The name of the trial judge;

(8) The time of the commencement and conclusion of the trial;

(9) The date of entry of findings of fact, conclusions of law and final decree;

(10) The dates when notice of appeal, assignment of errors and supersedeas bond staying execution prior to and pending appeal were filed and approved, showing the amount of such supersedeas bond and the names of the principal and surety thereon;

(11) Date of order, if any, extending time for filing apostles on appeal.

(C) The original pleadings, together with any exhibits annexed thereto, including the following: (and omitting those pleadings set forth in subparagraph A of Stipulation dated June 6, 1949, filed herein).

District Court Pleading No. 1: Libel.

District Court Pleading No. 3: Stipulation for Costs, $250 (Libelants').

District Court Pleading No. 4: Affidavit of Publication.

District Court Pleading No. 5: Claim of Ownership.

District Court Pleading No. 6: Release and Cost Bond.

District Court Pleading No. 7: Marshal's Return on Monition and Attachment.

District Court Pleading No. 13: Claimant's Answer.

District Court Pleading No. 15: Cross-Libel.

District Court Pleading No. 24: Interrogatories of Libelants, Cross-Respondents.

District Court Pleading No. 33: Answers of Cross-Libelants to Interrogatories of Libelants, Cross-Respondents.

District Court Pleading No. 34: Answer to Cross-Libel.

District Court Pleading No. 35: Motion of Libelants for Production under Rule 32.

District Court Pleading No. 37: Order on Libelants' Motion for Production under Rule 32.

District Court Pleading No. 41: Deposition of P. Baxevanis.

District Court Pleading No. 42: Notice of Intention to Amend Cross-Libel.

District Court Pleading No. 43: Motion of Claimant-Cross Libelant for Production.

District Court Pleading No. 46: Deposition of S. W. Newell (Claimant's Exhibit "O").

District Court Pleading No. 48: Deposition of N. A. Cross.

District Court Pleading No. 49: Deposition of James D. Clarke.

District Court Pleading No. 50: Deposition of Frank Gallagher.

District Court Pleading No. 51: Order on Motion for Production of Documents under Rule 32.

District Court Pleading No. 52: Depositions of Sundry Witnesses.

District Court Pleading No. 59: Reporter's Record of Court's Decision on 4/18.

District Court Pleading No. 60: Memorandum of Costs and Disbursements.

District Court Pleading No. 62: Findings of Fact and Conclusions of Law.

District Court Pleading No. 63: Final Decree.

District Court Pleading No. 64: Exceptions to Findings, Conclusions and Decree.

District Court Pleading No. 65: Claimant, Cross-Libelant's Request for Findings.

District Court Pleading No. 66: Claimant, Cross-Libelant's Proposed Final Decree.

District Court Pleading No. 67: Claimant, Cross-Libelant's Motion for Order Fixing Supersedeas Bond.

District Court Pleading No. 69: Notice of Appeal.

District Court Pleading No. 70: Assignment of Errors.

District Court Pleading No. 71: Supersedeas and Appeal Bond.

District Court Pleading No. 72: Order Discharging Release Bond.

(D) All depositions, together with all exhibits, in connection therewith (omitting such exhibits or

portions thereof stipulated to be omitted by stipulation filed herein, and transmitting the originals thereof in lieu of copies), including the following:

(1) Deposition of libelants' witness Frank H. Gallagher;

(2) Depositions of Claimant, Cross-Libelant's witnesses Andreas Beis, Panaiotis Baxevanis, James D. Clarke, N. A. Cross, S. W. Newell, George Vernon Roark, Arleigh O. Biehler, Edwin W. Pike, M. L. Newell, William Henry Weiler, Harry J. Summers and George M. Dupuy.

(E) The court reporter's transcript of all testimony and proceedings at the trial of said cause (omitting such items or portions thereof stipulated to be omitted by stipulation filed herein, and transmitting the original thereof in lieu of copies).

(F) All exhibits, or identifications offered and not admitted in evidence, except such exhibits or identifications as may be omitted pursuant to stipulation for omission filed herein, said exhibits to be included in the record or Apostles on Appeal and to contain the following:

(1) Libelants' and Cross-Respondents' exhibits:

#1. Specifications on contract work;

#2. Copy of shipyard invoice for $30,000 progress payment;

#3. Letter from Commercial Ship Repair to Compania Naviera Limitada dated September 23, 1948;

#4. Specifications for additional work;

#5. Invoice for contract and additional work;

#6. Invoice for spare parts;

#7. Preliminary consolidation of shipyard job orders;

#8. Survey report of H. F. Williams;

#10. Shipyard records on stores issued from stock;

#11. Shipyard invoices on libelants' purchases for tanker "Urania";

#12. Libelants' analysis of repair costs and profit;

#13. Sparkman & Stevens specifications for conversion;

#14. Diagram of Clayton Boiler & Pump by Mr. Biehler;

#15. Diagrams of lubricating oil cooler by Mr. Weiler;

#17. Survey report of A. B. of Shipping No. 3058 on M/V Urania.

(2) Claimant's and Cross-Libelant's Exhibits:

#1. Letter of Libelant signed by E. A. Black containing bid;

#2. Receipted invoice of libelant for $25,000 progress payment;

#3. Telegram dated October 13, 1948, from J. J. Featherstone to Antippas;

#4. Sparkman & Stevens specifications for conversion;

#5. Two invoices for additional work at Winslow and Port Angeles, Washington;

#6. Report of survey of Mr. Clarke at Winslow, Washington;

#7. Report of survey of Mr. Clarke at Port Angeles, Washington;

#8. Pilothouse log book for M/V "Urania";

#9. Invoices for disbursements at Manzanillo, Mexico;

#10. Statement of agent for ship at Manzanillo, Mexico;

#12. Engine room log book for M/V "Urania";

#13. Continuation of engine room log book for M/V "Urania";

#14. Diagrams (five) of main engine;

#15. Invoice and job order of Clayton Manufacturing Company;

#16. Instruction book and manual of Union Diesel Engine Company;

#17. Invoices of Union Diesel Engine Company;

#20. Analysis by Texas Oil Company of oil samples;

#21. Survey report of Edwin W. Pike;

#22. Survey report of George M. Dupuy;

#23. Survey report of Harry J. Summers;

#24. Invoices for disbursements at Los Angeles;

#25. Invoice for towing services;

#26. General Steamship Corporation, Ltd., cable re charter M/V "Urania";

#27. Invoice of Shell Oil Company for bunkers at Los Angeles;

#28. Photostatic copy charter party M/V "Urania";

#29. Lubricating oil cooler (to be crated and shipped separately);

#30. Copy of Northwest Airlines bill of lading on air freight shipment Knoxville, Tennessee, to Seattle, Washington.

(G) All other motions, stipulations, orders or pleadings, if any, filed subsequent to May 17, 1949, and prior to certification of this record and Apostles on Appeal relating to or in connection with the appeal herein and including this praecipe, the index and clerk's certificate as required by sub-paragraph 5, Admiralty Rules for the Ninth Circuit.

MERRITT, SUMMERS & BUCEY,

/s/ CHARLES B. HOWARD,

Proctors for Claimant, Cross-Libelant and Appellant, Compania Naviera Limitada, a corporation.

Receipt of copy acknowledged.

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

INTRODUCTORY STATEMENT

(1) Time of Commencement of Cause.

The above entitled cause, in admiralty, was commenced on October 13, 1948, by the filing of a libel in rem against the Motor Tanker "Urania", seeking recovery of a balance of $64,366.75 alleged to be due to libelants for material, labor and services furnished to the respondent vessel for repair, altera-

tion and renewals. The libel was filed in the Northern Division of the United States District Court for the Western District of Washington. A cross libel for damages was filed on January 26, 1949.

(2) Parties (Appellees and Appellant).

The libelants in said cause are E. A. Black and J. J. Featherstone, copartners doing business under the assumed name and style of Commercial Ship Repair. The libelants are the Appellees upon this appeal.

The claimant of said Motor Tanker "Urania", is Compania Naviera Limitada, a Panamanian corporation and owner of the respondent vessel. The claimant is the Appellant upon this appeal.

The libelants-Appellees are also cross respondents herein and the claimant-Appellant is also cross libelant herein by reason of the aforementioned cross libel.

(3) Proctors' Names and Addresses.

The proctors of record for libelants (Appellees) are Todd, Hokanson & White (Russell V. Hokanson and Richard White), successors to Langlie & Todd (Thomas Todd), who were the initial proctors for libelants. Their address is 682 Dexter Horton Building, Seattle 4, Washington.

The proctors of record for claimant-cross libelant (Appellant) are Merritt, Summers & Bucey (Lane Summers and Charles B. Howard). Their address is 840 Central Building, Seattle 4, Washington.

(4) Dates of Fling of Pleadings.

(a) Libel was filed October 13, 1948;

(b) Claim of Ownership was filed October 16, 1948;

(c) Claimant's Answer to Libel was filed November 16, 1948;

(d) Cross Libel of shipowner was filed January 26, 1949;

(e) Answer to Cross Libel was filed by cross respondents on February 25, 1949;

(f) Notice of Intention to Amend Cross Libel was filed March 18, 1949.

Dates of filing other interim pleadings are as shown on endorsement contained on said pleadings in the Apostles on Appeal.

(5) Date of Arrest of Respondent Vessel.

The respondent Motor Tanker "Urania" was arrested or attached by the United States Marshal at Seattle, Washington, on October 13, 1948, under process of Monition and Attachment issued upon said libel by the Clerk of said court on October 13, 1948.

(6) Date of Release of Vessel and Amount and Surety on Bond.

On October 15, 1948, said respondent Motor Tanker "Urania" was released from her attachment and the custody of the United States Marshal at Seattle upon the filing of a Release and Cost Bond to the U. S. Marshal in the sum of $80,000 upon which bond claimant (Appellant) was Principal and the National Surety Corporation was Surety.

(7) Trial Judge.

The case was tried before the Honorable John C.

Bowen, United States District Court Judge for the Western District of Washington, Northern Division, at Seattle, Washington.

(8) Time of Trial.

The trial was commenced on April 7, 1949, continuing thereafter from day to day until concluded on April 18, 1949.

(9) Entry of Findings of Fact, Conclusions of Law and Final Decree.

Findings of fact, conclusions of law and final decree were entered by the trial court on May 7, 1949, awarding judgment against claimant (Appellant) as the owner of respondent vessel for the sum of $64,-366.75 plus costs and disbursements taxed in the sum of $357.30, or a total sum of $64,724.05, to bear interest at rate of 6% per annum from May 5, 1949, until paid. By said final decree, the cross libel of Appellant was dismissed with prejudice.

(10) Dates on Appeal.

(a) Notice of Appeal and Assignment of Errors were served and filed May 16, 1949.

(b) Cost and Supersedeas Bond on Appeal in the sum of $80.000, with the same signatories as heretofore shown on the Release and Cost Bond, was approved and filed on May 17, 1949. On the same date an order was entered by the trial court, pursuant to signed stipulation of proctors for all parties herein, releasing and discharging the Release and Cost Bond previously filed, and exonerating the Surety on the Release and Cost Bond from any and all liability thereunder.

(11) Date of Order Extending Time to File Apostles on Appeal with Circuit Court.

Order extending to August 10, 1949, the time for filing Apostles on Appeal was entered June 13, 1949.

Prepared by
MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant-Cross
Libelant (Appellant).

Receipt of copy acknowledged.

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

STIPULATION AS TO LIBELANTS' EXHIBITS NO. 9 AND NO. 12

It is hereby Stipulated and Agreed by and between proctors of record for Libelants (Appellees) and Claimant (Appellant) that Libelants' Exhibit No. 9 as offered and admitted in evidence during the trial of this cause consisted of a large number of individual employees' time cards kept by libelants in the ordinary course of their business in operating a shipyard at Winslow, Washington. It is further Stipulated that the time cards which were admitted in evidence as Libelants' Exhibit No. 9 contain a daily or periodic notation of the number of hours of work performed by each individual employee of libelants upon the contract and additional work

aboard the respondent vessel "Urania" while at libelants' shipyard in August, September and October, 1948. It is further Stipulated that the total time for the workmen as recorded on said time cards is set forth by total number of hours and amount under columns entitled "Labor" in libelants Exhibit No. 12, being an analysis by libelants of their costs, overhead and profit on the repair, conversion and purchases made on or for the vessel "Urania" in August, September and October, 1948.

It is further Stipulated that libelants' Exhibit No. 12 reflects the total amount of time for workmen recorded on libelants' Exhibit No. 9 which would be found by the court upon an examination of said time cards, and that in view of the quantity of time cards and the duplication in information contained in libelants' Exhibits No. 9 and No. 12, the appellate court may consider libelants' Exhibit No. 12 without having before it the supporting time cards in libelants' Exhibit No. 9.

Dated at Seattle, Washington, this 6th day of June, 1949.

TODD, HOKANSON & WHITE,
/s/ RUSSELL V. HOKANSON,
Proctors for Libelants and Cross-Respondents (Appellees).

MERRITT, SUMMERS & BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant and Cross-Libelant (Appellant).

[Endorsed]: Filed June 6, 1949.

[Title of District Court and Cause.]

MOTION FOR ORDER EXTENDING TIME WITHIN WHICH TO FILE WITH THE APPELLATE COURT RECORD AND APOSTLES ON APPEAL.

Comes now the claimant-cross libelant above named, as the Appellant herein, and moves the court for an order extending the time within which the record and Apostles on Appeal in said cause may be filed with the U. S. Court of Appeals for the Ninth Circuit from June 25, 1949, when the time to file would otherwise expire, to and including August 10, 1949. This motion is based upon the records and files herein and upon the affidavit of Charles B. Howard attached hereto and made a part hereof.

Dated this 8th day of June, 1949.

MERRITT, SUMMERS & BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant-Cross Libelant (Appellant).

United States of America,
State of Washington, County of King—ss.

Charles B. Howard, being first duly sworn, on oath deposes and says:

That he is an attorney at law and a partner in the firm of Merritt, Summers & Bucey, proctors of record for the claimant-cross libelant in the above cause.

That Notice of Appeal and Assignment of Errors were served and filed in this cause on May 16, 1949. That concurrently therewith affiant requested Miss Patricia Stewart, the official court reporter, to proceed with the preparation of the transcript of testimony and the proceedings at the trial of said cause and confirmed said request by letter of May 17, 1949, addressed to Miss Stewart, copies of which were also sent to the Clerk of this court and to Todd, Hokanson & White, proctors for the libelants-cross respondents in said cause.

That the trial of said cause extended for nine days in court and the transcript of testimony and proceedings therein will be lenghty and will require additional time beyond forty days to prepare and complete for incorporation into the record and Apostles on Appeal to the appellate court. That this affiant has now been informed by Miss Stewart, the official court reporter, that she presently estimates that said transcript will not be completed before the middle of July, 1949. That in order to allow for any delay that may hereafter be encountered in the preparation of said transcript and to allow for its incorporation in the record and Apostles on Appeal and certification of said Apostles and filing with the appellate court, affiant believes that an extension of time until August 10 for the filing of said record and the Apostles on Appeal is necessary and proper. That said extension to August 10, 1949, for the filing of said record and Apostles on Appeal is within ninety days of the date of service and filing of the

Notice of Appeal and Assignment of Errors in this cause.

/s/ CHARLES B. HOWARD.

Subscribed and sworn to before me this 8th day of June, 1949.

[Seal] /s/ LANE SUMMERS,

Notary Public in and for the State of Washington, residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed June 8, 1949.

[Title of District Court and Cause.]

NOTICE OF HEARING CLAIMANT-CROSS LIBELANT'S MOTION FOR ORDER EXTENDING TIME WITHIN WHICH TO FILE WITH THE APPELLATE COURT RECORD AND APOSTLES ON APPEAL.

Comes now the above named claimant-cross libelant (as Appellant herein) by its proctors, Merritt, Summers & Bucey (Charles B. Howard of counsel), and hereby requests the clerk of the above entitled court to note for hearing before the court the above described Motion on the 13th day of June, 1949, at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel may be heard.

Dated this 8th day of June, 1949.

MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant-Cross
Libelant (Appellant).

To The Above Named Libelants-Cross Respondents And To Todd, Hokanson & White (Formerly Langlie & Todd), Its Proctors:

You, and each of you, are hereby notified that the above named Claimant-Cross Libelant has requested the clerk of the above entitled court to note for hearing on the 13th day of June, 1949, at the hour of 10 o'clock in the forenoon or as soon thereafter as possible before the above entitled court, Claimant-Cross Libelant's Motion for Order Extending Time Within Which to File with the Appellate Court Record and Apostles on Appeal.

Dated this 8th day of June, 1949.

MERRITT, SUMMERS &
BUCEY,
/s/ CHARLES B. HOWARD,
Proctors for Claimant-Cross
Libelant (Appellant).

Receipt of copy acknowledged.

[Endorsed]: Filed June 8, 1949.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING APOSTLES ON APPEAL

This matter having come duly and regularly on for hearing this date after notice and upon motion of claimant and cross libelant (Appellant) for an order extending time for filing Apostles on Appeal, the court having considered said application and the affidavit filed in support thereof, and it appearing to the court proper that said extension be allowed under the circumstances existing, now, therefore,

It is Ordered that the time for claimant-cross libelant, as Appellant, to file in the U. S. Court of Appeals for the Ninth Circuit its record and Apostles on Appeal in said cause, which otherwise would expire on June 25, 1949, be and it is hereby extended to and including August 10, 1949, such extension being necessary and proper to afford sufficient time for the preparation of the transcript of testimony and proceedings at the trial and the certification and filing of said Apostles.

Done in open court this 13th day of June, 1949.

/s/ JOHN C. BOWEN,
U. S. District Judge.

Presented by:

/s/ CHARLES B. HOWARD,
Of Proctors for Claimant-
Cross Libelant (Appellant).

Approved as to form:

TODD, HOKANSON & WHITE,
Proctors for Libelants.

Receipt of copy acknowledged.

[Lodged]: June 8, 1949.

[Endorsed]: Filed June 13, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO APOSTLES ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington do hereby certify that pursuant to the provisions of the order of court filed and entered June 6, 1949, and praecipe of proctors for appellant, I am transmitting as the apostles on appeal in the above entitled cause the following original pleadings, exhibits offered in evidence, depositions and reporter's transcript of proceedings on file and of record in said cause in my office at Seattle, to-wit:

Introductory Statement (76)
Libel (1)
Libelants' Stipulation for Costs (3)
Affidavit of Publication (4)
Claim of Ownership (5)
Release and Cost Bond (6)

Marshal's Return on Monition and Attachment (7)

Claimant's Answer (13)

Cross-Libel (15)

Interrogatories of Libelants, Cross-Respondents (24)

Answers of Cross-Libelants to Interrogatories of Libelants, Cross-Respondents (33)

Answer to Cross-Libel (34)

Motion of Libelants for Production under Rule 32 (35)

Order on Libelant's Motion for Production under Rule 32 (37)

Deposition of P. Baxevanis (41) and Andreas Beis

Notice of Intention to Amend Cross-Libel (42)

Motion of Claimant-Cross Libelant for Production (43)

Deposition of S. W. Newell (46)

Deposition of N. A. Cross (48)

Deposition of James D. Clarke (49)

Deposition of Frank Gallagher (50)

Order on Motion for Production of Documents under Rule 32 (51)

Depositions of Sundry Witnesses (Roark, Biehler, Pike, Newell, Weiler, Summers and Dupuy) (52)

Reporter's Transcript of Court's Decision of 4-18-49 (59)

Memorandum of Costs and Disbursements (60)

Findings of Fact and Conclusions of Law (62)

Final Decree (63)

Exceptions to Findings, Conclusions and Decree (64)

Claimant, Cross-Libelant's Request for Findings (65)

Claimant, Cross-Libelant's Proposed Final Decree (66)

Claimant, Cross-Libelant's Motion for Order Fixing Supersedeas Bond (67)

Notice of Appeal (69)

Assignment of Errors (70)

Supersedeas and Appeal Bond (71)

Order Discharging Release Bond (72)

Stipulation as to Record and Apostles on Appeal (73)

Reporter's Transcript of Testimony and Proceedings (81)

Order on Record and Apostles on Appeal (74)

Praecipe for Apostles on Appeal (75)

Stipulation as to Libelants' Exhibits #9 and #12 (77)

Motion for Order Extending Time within which to File with Appellate Court Record and Apostles on Appeal (78)

Notice of Hearing Claimant-Cross Libelant's Motion for Order Extending Time within which to File with the Appellate Court Record and Apostles on Appeal (79)

Order Extending Time for Filing Apostles on Appeal to and including August 10, 1949 (80)

Libelant Exhibits 1 to 8 inclusive; 10 to 15 inclusive; 17.

Respondent Exhibits A-1 to A-10 inclusive; A-12 to A-17, incl; A-20 to A-30 inclusive.

I further certify that the foregoing constitute the apostles on appeal from the Final Decree herein filed and entered on May 7, 1949, to the United States Court of Appeals at San Francisco.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 3d day of August, 1949.

MILLARD P. THOMAS,
Clerk,

[Seal] By /s/ TRUMAN EGGER,
Chief Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division

In Admiralty—No. 15266

E. A. BLACK and J. J. FEATHERSTONE, co-partners doing business under the assumed name and style of Commercial Ship Repair,

Libelants,

vs.

THE MOTOR TANKER "URANIA," her engines, tackle, apparel, furniture and equipment,

Respondent,

COMPANIA NAVIERA LIMITADA, a corporation,

Claimant.

COMPANIA NAVIERA LIMITADA, a corporation,

Cross-libelant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, co-partners doing business under the assumed name and style of Commercial Ship Repair,

Cross-respondents.

Before: The Honorable John C. Bowen,
District Judge.

TRANSCRIPT OF PROCEEDINGS AT TRIAL [1*]

Seattle, Washington, April 7, 1949

* Page numbering appearing at foot of page of original Reporter's Transcript.

Appearances:

MR. RUSSELL V. HOKANSON,
MR. RICHARD S. WHITE,
for and on behalf of
libelants and cross-respondents.

MR. CHARLES B. HOWARD,
THEODORE LeGROS,
for and on behalf of respondent,
claimant and cross-libelant.

The Court: Are parties and counsel ready to proceed with the trial of Black and Featherstone, co-partners, doing business as Commercial Ship Repair, vs. The Motor Tanker "Urania," etc. and Compania Naviera Limitada, claimant and respondent?

Mr. Hokanson: Libelants are ready, Your Honor.

Mr. Howard: Respondent and claimant is ready with the exception, if the Court please, of one matter that is pending on notice of intention to amend the cross libel, which we are here to move at this time.

The Court: The Court will dispose of that a moment later. Is this matter an admiralty cause of action which comes before the Court for trial by the [2] Court as the trier of the fact? That being the case, you may present the matter which you started to mention, Mr. Howard.

Mr. Howard: May it please the Court, on March 18 we served upon the libelant our notice of inten-

tion to amend the cross libel, which notice was filed in the Clerk's office on the same date. At this time, and pursuant to said notice and general Admiralty Rule 23, we move the Court for an order permitting amendment of the cross libel in the following respects: referring to the third page of the cross libel——

The Court: When was the cross libel signed?

Mr. Howard: January 26th.

The Court: Subparagraph 1 of paragraph 4?

Mr. Howard: That is the item which we would first like to refer to. We move the Court for an order permitting the deletion of that item from the cross libel. We have also given notice of our intention to move the Court for an order to permit an amendment by adding a new subparagraph 1 covering an item of repairs to Clayton boiler and generator at Long Beach in the sum of $678.86.

The Court: Is there any objection to the motion as to those two details?

Mr. Hokanson: There is no objection, Your Honor. [3]

The Court: What do you think is the most practical way of accomplishing it?

Mr. Howard: If the Court please, I have prepared a new page which I think we can substitute in lieu of that, which eliminates one item and adds the other.

The Court: Does Mr. Hokanson agree that is an appropriate method of accomplishing the amendment desired?

Mr. Hokanson: That is quite agreeable, Your Honor.

The Court: Those are the only two items respecting the amendment asked?

Mr. Howard: There is one other item, Your Honor, that we have agreed upon about two weeks ago.

The Court: Is it covered in this sheet?

Mr. Howard: No, Your Honor, it is not.

The Court: You may mention it.

Mr. Howard: Item 10 on page 3, "Corrective cleaning of tanks at Long Beach, California, $2157.00." As to that item, I have advised counsel for the libelants and cross respondents that we waive that item and are willing to have that item deleted from our claim.

The Court: Why not just delete it from this page? Will you look, Mr. Howard, at page 4 of the cross libel and see if there is any item on that [4] affected by this amendment?

Mr. Howard: Yes, Your Honor, that will change the amount shown in Paragraph 5. I do not have the corrected total now, but at the next recess I can compute that.

The Court: You can do that by changing the figures. Does anyone connected with the case object to the Clerk taking out the original page 3 of the cross libel which is now in that cross libel, and substituting in the place of it this new page 3?

Mr. Hokanson: No objection, Your Honor.

The Court: The Clerk will do that.

The motion for trial amendment is granted in the respects mentioned. You may proceed.

Are the libelants contented with the form of libelants' pleadings now in effect?

Mr. Hokanson: We rest on our pleadings as they stand.

The Court: Does your answer to the cross libel sufficiently cover these amendments?

Mr. Hokanson: I have not scrutinized it with a view to the amendments, but it constitutes a general denial and with certain affirmative matters set up.

I believe, Your Honor, you having called that to my attention, that one of our affirmative allegations may possibly be affected.

The Court: Do your clients plead a general denial to these cross libel items?

Mr. Hokanson: Yes, Your Honor.

The Court: May it be understood for the sake of the record that the amended items be deemed denied by the answer which is already on file?

Mr. Howard: That is agreeable, Your Honor.

The Court: Is there some affrmative defense matter which you wish likewise to apply to these amended items?

Mr. Howard, in addition to your cross libel, was there a separate answer to the libel?

Mr. Howard: Yes, Your Honor. That was filed on November 16.

The Court: Is that still in effect, or is it superseded by the cross libel?

Mr. Howard: That answer is still in effect.

The Court: Will the Clerk take that answer and the libel and the cross libel and the answer to the cross libel out of the file and let the Court have them?

Mr. Hokanson: Your Honor, the changes will not affect our answer to the cross libel.

The Court: In other words, you think that your answer, both as to general denial and as to the [6] affirmative matter pleaded in the answer, if there is any such affirmative matter, does not need any further statement other than what you have already made?

Mr. Hokanson: That is correct, Your Honor.

(Whereupon, opening statement having been made on behalf of libelant, the following proceedings were had and done, to-wit:)

Mr. Howard: I have that figure to insert in paragraph 5 of the cross libel, Your Honor.

The Court: Would you like to write it in?

Mr. Howard: Yes, Your Honor.

The Court: Does Mr. Hokanson agree he may do so?

Mr. Hokanson: Yes. What is the figure?

Mr. Howard: $39,543.37.

The Court: Strike out the figure as now written and substitute the correct figure in the place of it.

You may call libelants' first witness.

Mr. Hokanson: Mr. Black. [7]

EDWARD A. BLACK

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name, please.

A. Edward A. Black.

Q. Your residence, Mr. Black?

A. 4532 East Laurel Drive, Seattle, Washington.

Q. What is your business or occupation?

A. Co-owner of Commercial Ship Repair.

Q. Who is your co-partner?

A. Mr. J. J. Featherstone, my father-in-law.

Q. And does Commercial Ship Repair have repair facilities in King County? A. They do.

Q. Where is that located?

A. We have one dock at Pier 66 in Seattle, and another one in Winslow, Washington.

Q. That is in Kitsap County?

A. Bainbridge Island, yes.

Q. Would you describe the facilities at Winslow, Washington, owned by Commercial Ship Repair?

A. At Winslow, we have a complete shipyard, including a 4,000-ton dry dock. It is a very well equipped yard and facilities were set up some time ago and operated during the first war and in the second war building steel minesweepers for the U. S. Navy.

Q. What are your qualifications as a ship-repair man, Mr. Black?

(Testimony of Edward A. Black.)

A. I have spent the past seven years in the ship-repair business, starting at Winslow in 1941 as a ship-fitter's helper, and working on up to the end of the war and the end of 1945 as Assistant General Superintendant in charge of all outside production.

Q. And have you been in that business since 1945? A. Yes.

The Court: 1945, was that the year?

The Witness: No, 1941, Your Honor, when I started.

Q. When was the co-partnership doing business as The Commercial Ship Repair started?

A. April 1, 1946.

Q. Have you been in business continuously since? A. Yes, sir.

Q. Have you ever had any business transaction or transactions with the Compania Naviera Limitada, [9] a Panamanian corporation?

A. Yes, we have.

Q. Would you state when you first had a transaction with that company?

A. In the first part of August, I believe around the 4th of August.

Q. In what year? A. 1948.

Q. Would you state the circumstances surrounding that transaction?

A. We received a call from the General Steamship Company saying they had a set of specifications to be picked up at their office. One of our men picked the specifications up, and our Outside Gen-

(Testimony of Edward A. Black.)

eral Superintendent, Mr. Sweetin, and Mr. Finn, who was our Outside Superintendent on the Seattle side, Seattle Operations, went aboard the Urania, which was then a Navy tanker. I believe it was in Lake Union, I couldn't swear to that, but I believe it was.

At that time, they met Mr. Antippas for the first time on board the ship. After going over the first specifications, which we had picked up from the steamship company, Mr. Sweetin and Mr. Finn told [10] Mr. Antippas it was impossible to put a bid in on those specifications, and with the agreement and understanding of Mr. Antippas, Mr. Sweetin and Mr. Finn re-wrote a set of specifications, and it was these specifications which we bid on by item, making a total lump-sum bid of $39,780, which was taken up to General Steam's office and opened up, I believe, by Mr. Antippas.

Q. Did you thereafter have any further communication with Mr. Antippas?

A. I believe the bids were opened at four p.m., and approximately a quarter to five that same day, I received a call from Mr. Antippas saying that he would like to discuss further negotiations with us in regard to repair work on this ship, and I invited him to come down to our office at Pier 66, which he did.

Q. Mr. Black, do you know whether your bid was low on that job?

A. Our bid was not low.

(Testimony of Edward A. Black.)

Q. How do you know that?

A. Because it was a publicly opened bid, and Puget Sound Bridge and Dredge's bid was $39,000 even, I believe.

The Court: How much was yours, for the record in [11] this connection?

The Witness: $39,780.

The Court: How much difference?

The Witness: $870.

Q. $780? A. Yes.

Q. Were you advised by Mr. Antippas that your bid was not low? A. I was.

Q. Would you now state what discussion you had with Mr. Antippas when he came to your office?

A. Approximately five o'clock, Mr. Antippas came to my office bringing with him the Captain of the Urania and Mr. Harry Williams. This was the first occasion that I had the opportunity of meeting any one of the three gentlemen. In my office at that time there was Mr. Joe Sweetin and Mr. Fred Finn. We discussed certain phases of our bid. There were a few items they were wondering if we had included in our original bid, which were minor. There were also three additional items they wanted an agreed price on, which we gave them. One was installing some bits on the fore part of the ship, which we gave them an agreed price of $300.

Mr. Hokanson: May I interrupt you, so that you [12] may testify from a document which I

(Testimony of Edward A. Black.)

would like marked Libelants' Exhibit 1 for identification?

(Set of specifications marked Libelants' Exhibit 1 for Identification.)

The Court: At some appropriate time in the case, in the course of the direct examination of this witness—and the same would be true in the case of any other of the proprietor witness, proprietors in libelants' business—the Court would be interested to hear testimony at greater length concerning the qualifications of these libelants to do repair work of this magnitude. That would involve not only the personal experience, but also the nature and capacity of the plant repair yard and the suitability of equipment employed and the competence of the submanagers, foremen, superintendents and workmen. I believe in this case there is in question the quality of these repairs for which libelants sue to recover compensation?

Mr. Hokanson: That is correct, Your Honor.

Q. Showing you Libelants' Exhibit 1 for identification, can you identify that? A. Yes.

Q. What is it?

A. It is the original specifications we based our original bid on. These specifications were drawn up by Mr. Sweetin. We attached the additional items discussed in our office that day to the specifications.

The Court: With whom was Mr. Sweetin associated in business?

(Testimony of Edward A. Black.)

The Witness: With the Commercial Ship Repair.

The Court: In what capacity was he connected with that concern?

The Witness: He was our Outside Superintendent.

Mr. Hokanson: I now offer this document in evidence.

Mr. Howard: I would like to examine this witness as to one page of this document before it is ruled upon.

The Court: You may examine him, touching the authentication and admissibility of this document, and confine your questions to that subject.

Voir Dire Examination

By Mr. Howard:

Q. Referring to page 7 of Libelants' Exhibit 1, will you state whether that page was prepared at the time the original bid was made?

A. No, it was not prepared when the original bid was made, because these were the items we discussed in our office after the original bid was opened.

Q. Was page 7 attached to the specifications at the time you discussed this in your office with Mr. Antippas?

A. No, it was not, because our girls had gone home at that time, and we made pencil or ink notations on [14] the back of the specifications and dictated page 7 to the girls the next morning as per our agreement with Mr. Antippas. These speci-

(Testimony of Edward A. Black.)

fications were the original ones sent to Winslow when Mr. Williams and Mr. Sweetin went over before the job was started.

The Court: By "girls" do you mean secretaries or typists in the office?

The Witness: I do, Your Honor.

Q. Are the ink notations that you have referred to contained on some other sheet of this exhibit?

A. Mr. Sweetin during our conversation with Mr. Antippas made some ink notations on the back of page 6 for his reference after they left in order to re-write the items which we included with the original specifications before the job was started.

Q. Then page 7 was not discussed with Mr. Antippas in the form that you have it attached there?

A. It was discussed, but it was not written up.

Mr. Howard: I have no objection to the first six pages of this document marked as Exhibit 1, if the Court please. I do object to page 7.

The Court: Do you have available as a part of that exhibit those notes you say were discussed?

The Witness: Yes, I have, Your Honor.

The Court: Are they on page 7 which is objected to? [15]

The Witness: No, they are just made—just in short items on the back of page 6.

The Court: Is there any reason why page 7 couldn't be deleted, and the Court rule upon the admissibility of the remainder of the Exhibit?

(Testimony of Edward A. Black.)

Mr. Hokanson: I believe page 7 is merely, at least with respect to the first two items, a reiteration of what is contained in ink at the bottom of page 6. The balance of the items should be included, inasmuch as it will be our position——

The Court: When were they done? When was page 1 made?

The Witness: It was made the following morning, that the ship went to Winslow from the Seattle side, and sent over as the original specifications.

The Court: To whom?

The Witness: To Mr. Lindgren, our General Manager of the Winslow plant.

The Court: What if any other use was made of page 7? When was the use made of it?

The Witness: This work on page 7 was accomplished under the original contract, your Honor.

The Court: Did Mr. Antippas or anybody connected with Compania Naviera Limitada or the ship "Urania" have any dealings with page 7, or the facts and data [16] therein contained?

The Witness: Yes, they did, your Honor.

The Court: When and under what circumstances?

The Witness: Mr. Williams had dealings with these items from the very first day of the contract until the items were completed.

The Court: How did he deal with them?

The Witness: He saw these items were carried

(Testimony of Edward A. Black.)

out, the same as the original contract, that they were installed.

The Court: You mean by that to indicate that Mr. Williams used page 7 in connection with his verification of the work, or observation of the doing of the work, while the work was proceeding?

The Witness: Yes, sir.

The Court: Any other items, Mr. Howard?

Q. Were the items on page 7 other than the first two items, numbered 48 and 49 included in the contract work?

A. Item 50 was not included—I mean it was included. Will you state your question again?

Q. Were the items on page 7 other than numbers 48 and 49 included in the contract work?

A. Yes.

The Court: The objection is overruled: Libelants' [17] Exhibit 1 in its present form is now admitted.

(Libelants' Exhibit 1 received in evidence.)

LIBELANTS' EXHIBIT NO. 1

Specifications—M. T. Urania

We propose to accomplish in accordance with specifications and plans, as closely as possible, the following work.

1. Drydocking (*90)

Drydock vessel for cleaning, painting and specified repairs. On completion of work, undock vessel.

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*Figure written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

2. Underwater Painting (*580)

Scrape and wash down underwater body of vessel to remove fouling and loose scale. Touch up bare spots below deep load line with bareplate primer. Paint hull from keel to deep load line, port and stbd, with one coat of AC paint. Paint hull from keel to light load line port and stbd, with one coat of AF paint. Paint hull from light load line to deep load line, port and stbd, with one coat of boottopping paint. Owner to furnish paint.

3. Hull Marking (*150)

Paint in draft marks at bow and stern. Paint name of vessel on bow, port and stbd.

Paint name and hailing port of vessel at stern.

Paint in Plimsoll marks, port and stbd, sides.

4. Name Board (*90)

Manufacture and install suitable name boards on bridge, port and stbd.

5. Sea Valves and Strainers (*125)

Remove strainers from sea chests for examination.

Clean and paint sea chests and strainers and replace strainers in good order. Open out all sea valves for examination. Overhaul, grind-in, repack and repaint all sea valves and close up in good order.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

6. Tailshaft (*475)

Draw propeller tailshaft for examination. On completion of examination reinstall tailshaft and make up in good order.

Repack stern gland with new packing.

7. Rudder (*225)

Rudder to be opened and drained as necessary for complete examination of rudder and stock. On completion of examination close up in good order and repack stuffing box with new packing.

8. Zinc Plates (*80c)

Quote pount price for replacement of zinc plates found to be missing or deteriorated. Zincs to be secured by stainless steel studs and nuts made up in good order.

9. Propeller (*30)

Clean propeller by wire brushing.

Fair up and dress off minor indents in tips of blades.

Separate work order to be issued to cover any major work found to be necessary.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

10. Cargo Tanks and Piping System (*5900)

Remove and dispose of approximately 3000 bbls. of ballast and sludge presently in eight (8) cargo tanks.

Clean tanks and piping system and certify "gas free" for hot work and internal examination.

Test tank heating coils and report condition found.

Open out all cargo valves, both on deck and in tanks, for examination.

Overhaul valves, grind in, repack and rejoint and make up in good order.

Free up all control reach rods of internal tank valves and repack at deck glands.

Open vapor-vacuum valves for examination. Free up as required and close up in good order.

On completion of tank cleaning and internal examination test tanks hydrostatically to requirements of ABS. On completion of testing remove testing water as directed.

11. Cargo Pumps (*400)

Open cargo pumps and motors and clean up for ABS examination.

On completion of examination close up in good order.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

12. Cargo Tank Ullage Covers (*600)

Free up and lubricate all dogs and hinges on cargo tank ullage covers.

Renew gaskets on cargo tank ullage covers. Prove in good order.

13. Fuel Oil Tanks (*800)

Remove diesel oil from fuel tank located in way of engine room and clean tank.

Certify tank "gas free" for internal examination and hot work.

On completion of internal examination test tank hydrostatically to requirements of ABS.

On completion of testing drain tank free of water and reload diesel oil in tank. Provide suitable storage for diesel oil while tank is being cleaned and tested.

14. Forepeak and Aft Peak Tanks (*575)

Drain and clean out forepeak and aft peak tanks for internal examination.

It is assumed that these tanks are ballast tanks and are not contaminated.

On completion of internal cleaning and examination tanks to be coated with one coat cement wash.

On completion of above work tanks to be hydrostatically tested to requirements of ABS.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

On completion of testing remove testing water and leave tanks dry.

15. Fresh Water Tanks (*575)

Drain and clean out fresh water tanks located port and stbd in way of engine space. Open tanks for internal examination.

On completion of examination tanks to be coated with one coat cement wash.

Tanks to be hydrostatically tested to requirements of ABS.

On completion of test leave tanks full of fresh water.

16. Ballast Tank Conversion (*1650)

Forward Deep Tank presently fitted as a ballast tank to be converted to use as diesel fuel tank as follows:

Open tank and clean for internal examination.

Connections between tank and forward bilge and ballast pump are to be removed and suitable blanked off.

Furnish and install an electric driven fuel oil transfer pump, rotary type, Viking or equal, capacity 10 gpm., as described in section S47 of Conversion Specifications.

Pump to be suitable located in storeroom over tank space.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Furnish and install fuel oil piping in general accordance with contract plan 837-7.

On completion of work close up tank in good order and test tank and new piping to requirements of ABS.

On completion of test remove all test water from tank and leave ready to receive fuel oil.

17. Gun Tubs and Ammo Lockers (*600)

Remove all ammunition lockers and ready service boxes from decks.

Remove splintel apron and gun pad from poop deck, plug anchor bolt holes watertight.

Remove superfluous sections of forward gun tub leaving section in way of catwalk.

Install suitable handrails and curtain plates in way of catwalk forward where sections of gun tub removed.

Chip off all rough edges and grind smooth.

18. Ladders and Handrails (*425)

Fair and refit all deck ladders and handrails where damaged and install new handrails where missing.

Refit and rig bulwark stanchions at port and stbd

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

sides of main deck and fit out with new wire and turnbuckles. Any missing stanchions to be furnished by owner.

19. Port Lifeboat (*50)

Fair out indents in hull of Port lifeboat and restore to original good order.

20. Watertight Doors and Scuttles (*300)

Free up all dogs and locking gear, including hinges, of all watertight doors and scuttles leading from weather decks to forecastle and after house. Thoroughly lubricate and prove in good order.

21. Mushroom Ventilators (*125)

Free up, lubricate and prove in good order all mushroom ventilators on weather decks.

22. Ventilation Systems (*75)

Check out all ducts and blowers in ventilation system throughout the vessel and report condition found.

23. Electrical System (*275)

Megger test all electrical circuits, motors and generators throughout nessel to requirements of ABS and report conditions found.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Reassemble and properly close up all open junction boxes, switch boxes and outlets.

Renew fuses on all switchboards where standard fuses fitted.

Report all deficiencies found in electrical system.

Check markings on all electrical switch boxes and relabel correctly as found necessary.

Separate order will be issued for all equipment renewals found to be necessary to restore system to good order and operating conditions.

24. Fire Fighting Equipment (*125)

Check, test and/or weigh all fire extinguishers and CO^2 bottles and report condition found.

Ships crew will recharge all liquid extinguishers.

Separate order will be issued for recharging CO^2 bottles as necessary.

25. Engine Controls and Telegraph (*75)

Test out Pilot House controls to main engine and engine order telegraph and report condition found.

Free up and lubricate mechanical equipment found in good order.

26. Steering Engine and Controls (*75)

Test out steering engine and steering gear and report condition found.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Free up and libricate mechanical equipment found in good order.

Remove locking device from rudder before testing.

27. Gauges and Indicators (*125)

Check out all gauges and indicators throughout vessel and report condition found.

Gauges and indicators where dismounted to be reinstalled and connected in good order.

28. Flag Pole (*50)

Damaged flagpole at poop to be faired and refitted as originally installed.

Check and repair electric connections and fittings to restore to good order.

29. Whistles (*50)

Check out and test whistles and report condition found. Make minor adjustments and connections found necessary.

30. Mooring Winch (*2750)

Furnish and install suitable electric driven mooring winch for handling of stern lines. Motor drive to operate at 120 V.D.C. and to be approximately 3 to 5 HP.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Controls to be located in convenient location as directed and to be weatherproof.

31. Wheelhouse Doors (*450)

furnish and install two (2) new metal doors at wheelhouse, port and stbd. sides.

Frame to be fitted to accomodate new doors.

Doors to be fitted with all new hardware including holdback and ajar hooks.

32. Navigation and Flood Lights (*150)

Check out and refit as necessary, all navigation lights, search light and deck flood lights and prove in good order.

33. Mast Rigging (*75)

Mast rigging and fittings shall be examined and existing equipment repaired to restore to original good order, any renewals to be furnished by owner.

34. Screendoors (*175)

Renew damaged or missing screening in screen doors throughout vessel. Renewals to be bronze or copper screening.

35. Sprinkling System (*175)

Sprinkling system to forward ammunition locker to be removed in its entirety.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

36. Ammo Storeroom Bulkhead (*275)

Remove designated section of bulkhead at forward ammunition storeroom.

37. Plumbing and Heating Systems (*475)

Check out all plumbing and heating fixtures presently on the vessel and repair as found necessary to restore to good order.

Vessel to supply any missing or damaged fixtures.

Connect all piping, close all drains, test out and free up flushometers.

38. Crews Quarters * Port Side, Main Deck (*3600)

Furnish and install crews quarters to accomodate eleven (11) men in four (4) rooms on Port side, Main Deck as per arrangement plan #837-1 and in accordance with details specified in conversion specifications.

39. Crew Quarters * Stbd Side, Main Deck (*1600)

Furnish and install crews quarters to accomodate two (2) men in one (1) room on stbd side, main deck aft together with sanitary facilities adjacent thereto as per Arrangement Plan #837-1 and in accordance with details specified in conversion specifications.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

40. Messroom (*275)

Furnish and install joiner bulkheads in way of officers messroom to suitable divide space and segregate from adjacent crew messroom as directed.

41. Officers Quarters * Boat Deck (*9470)

Furnish and install new section of deck house at port and stbd sides of existing Captains Quarters on Boat Deck as per Arrangement Plan #837-1 and in accordance with details specified in Conversion Specifications.

Soil lines and piping to Officers Toilet and Shower Room in way of Refrigerator space to be rearranged to accomodate Refrigerator space arrangement.

42. Captains Stateroom (*675)

Captains Stateroom to be thoroughly cleaned out and furniture and fixtures rearranged and refitted to restore to original good order.

43. Refrigeration Space and Equipment (*3250)

Furnish and install Refrigeration Boxes and

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

equipment essentially as per Arrangement Plan #837-1 and in accordance with details specified in conversion specifications. Hotel type domestic refrigerator presently located in this space to be removed, overhauled to restore to good order and reinstalled with all fittings and controls in ship's Galley as directed.

Space as detailed in Arrangement Plan to be enlarged by extending stbd bulkhead approximately three (3) feet to stbd side to allow use of center section in way of entrance door for passage of fire main and electrical wiring as presently installed.

Center section will not be insulated but will be used for access to Meat Box on Port Side and to Vegetable Room on stbd side.

Controls for individual boxes to be located in center section adjacent to boxes served and compressor to be located conveniently in Engine Space.

44. Galley (*370)

Reomve domestic refrigerator and bread box and install hotel type domestic refrigerator to be removed from Refrigerator space.

Clean up service tables by wire-brushing to bare metal.

Check out Galley electric range and report condition found.

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

Repair cowling over galley range to restore to original good order.

Overhaul galley range exhaust blower as necessary to restore to original good order.

45. Clayton Boilers—(2) (*850)

Clean out two (2) Clayton Boilers located in Engine Space.

Thoroughly check out, examine and test all parts and controls and report condition found.

46. Anchor Windlass (*325)

Check out anchor windlass, drive motor and controls and report condition found. Assemble parts in good order and test windlass to ABS requirements. Thoroughly lubricate.

47. Steam and Water Lines (*225)

Connect up and test out all existing fresh water, steam, sanitary and fire lines throughout vessel and report condition found.

Renewals found to be necessary to be covered by separate work order.

48. Bitts—install 2—10" (*300)

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*Figures written in ink appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

49. Free up skylight (*75)

48. Panama Bitts (*300)

Furnish and install two (2) ten-inch (10″) Panama Bitts.

Bitts to be located on focsle head, port and stbd, as directed.

49. Skylight Operating Gear (*75.00)

Free up and lubricate operating gear of engine room skylight and prove in good order.

50. Chart Room (*1500)

Furnish and install Chart Room to be located aft of Captain's Quarters on Boat Deck approximately 8 ft x 8 ft x 7 ft. (Revised item to be issued giving details.)

[Items 48 and 49 are written in ink at the foot of page 6 of original exhibit.]

51. Engineers Assistance (*3.25 per hr.)

Furnish services of two (2) qualified Diesel engine machinists to walk in Engine Room as directed by Chief Engineer.

52. Chain Pipe Covers (*00)

Furnish and install chain pipe covers as required. Free up and refit existing dogs and covers on chain pipes and hawse pipes, port and stbd.

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*Figures written in pencil appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

53. Pipe Lagging (*00)

Check out entire vessel for defective pipe lagging and report condition found. All defective lagging to be renewed or repaired to restore to good order.

54. Dry Storeroom Shelving (*00)

Metal shelving and bins to be furnished and installed as directed in space below main deck, aft of engine room.

55. Vegetable Locker (*00)

Furnish and install suitable vegetable locker, with lock, on poop deck as directed. Locker to be constructed of expanded metal screen.

56. Door Locks (*00)

Renew or repair defective joiner door locks throughout vessel.

Furnish keys with new locks.

57. Pelorus Stands (*00)

Remove two (2) Pelows stands located at port and stbd sides of bridge. Flush off cuts and grind smooth.

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*Figures written in pencil appearing in left margin on original exhibit.

(Testimony of Edward A. Black.)

Libelants' Exhibit No. 1—(Continued)

[Note]: The following is written in ink on the back of page 6 of original exhibit.

1. Port holes
2. Deck covering
3. Insulation
4. Scuttles
5. Skylights
6. Chain pipe covers √
7. Pipe Lagging √
8. Fire Extinguishers
9. —none
10. Store room shelves √
11. Locks √
12. Portable ventilating fans
13. Searchlights
14. Remove Pelorus stands √
15. Install bitts forward
16. Pilot house extension

Chart extension $1500.00

SU 5119

Admitted April 7, 1949.

Direct Examination

(Continued)

By Mr. Hokanson:

Q. With respect to the writing on the reverse side of page 6, calling your attention to item 16,

(Testimony of Edward A. Black.)

would you state your recollection as to the reason for the inclusion of that notation?

A. Item 16 is "Pilot house extension and chart room—$1500." Mr. Antippas wanted a chart house built on the Urania at the time he was in our office. He asked what the cost would be to build a steel chart house, describing the type of house he wanted, the approximate number of port lights and the approximate size. I figured up the approximate amount of steel, and the labor, and gave him a price of $1500, which was agreeable to Mr. Antippas. He said that he would leave that item up to the discretion of Mr. Harry Williams, who would be his representative on the job, and as the ship got to Winslow, it would be up to Mr. Williams to tell them whether to proceed with the chart house or not to proceed with the chart house. [18]

Q. Did you arrive at a price for the items listed on Exhibit 1? A. Yes.

Q. What agreed price did you reach with Mr. Antippas?

A. Our original bid covered from items 1 through 47. Item 48 was installing of two ten-inch bitts, agreed price $300. Item 49 was working over the operating gear of the skylight, agreed price $75. Item 50 was chart room installing to be located on boat deck, approximate size eight feet by seven feet, agreed price $1500.

Q. Did you at this meeting with Mr. Antippas arrive at any fixed figure for all of the items through item 49? A. We did.

(Testimony of Edward A. Black.)

Q. What was that amount?

A. It was $40,155.

Q. With respect to item 50, what was the understanding?

A. The agreed price would be $1500 if the item was done, and it would be left up to the discretion of Harry Williams after the ship arrived at Winslow whether or not they would put that additional chart house on the Urania.

Q. As I understand it, the total including the chart room was $41,655? A. That is correct.

Q. There are certain amounts listed after item 50 with marginal notations, ciphers. Could you explain what those items represent?

A. There are items 51, 52, 53, 54, 55, 56 and 57, seven additional items which were brought up at that time of minor nature, which Mr. Antippas asked me if we had included in our original bid inasmuch as they were not of major consequences. On item 51 he informed me that his engine room crew and his chief engineer would be working over the machinery in the engine room, and what price would we quote them per hour to supply them machinists to work under his chief engineer's supervision. We put "to assist chief engineer, 2 qualified machinists for $3.25 per hour. In other words, he wanted a basic rate of what we would charge him for men that he procured from our yard to work under the supervision of his chief engineer. The other items were like chain covers and small items which we agreed to do.

(Testimony of Edward A. Black.)

The Court: Where is the statement of that agreed work as to items, including item 50 which you a few minutes ago testified concerning? Is there a written statement showing those items?

The Witness: Yes, there is.

The Court: It has not been offered yet.

Mr. Hokanson: It will be offered through another witness. [20]

The Court: State whether or not these amounts you have just recently mentioned in your testimony comprise all of the amounts you are suing for.

The Witness: No, they are not, your Honor. As the job developed, there was an additional amount of work which was done on an agreed price with Mr. Williams in order to complete the entire job. As many of these original items are written to test and report the findings, and additional orders will be written.

Q. Was anything further discussed at this meeting in your office with Mr. Antippas? A. Yes.

Q. Would you state what that was?

A. Mr. Antippas was accompanied by Mr. Harry Williams and the Captain of the ship. Mr. Antippas informed me that he was leaving for New York either that evening or the next day, and that he was leaving Mr. Harry Williams in complete charge of the repair work as his representative, and Mr. Williams would make all decisions in regard to the work, would be in a position to give us additional work, and be in a position to agree on any deletions

(Testimony of Edward A. Black.)

or any additions other than was stated in the contract, and would be in a position to negotiate in any way as his [21] representative. We were informed that we were not to deal with the ship's crew, the Captain would have charge of the ship's crew and we were to deal directly with Mr. Williams. Anything the crew wanted, they were to deal with Mr. Williams and Mr. Williams would deal directly with us.

Q. Were those instructions carried out?

A. They were carried out, passed on to our Winslow yard. I sent Mr. Sweetin over with Mr. Williams the following morning to introduce Mr. Williams to Mr. Lindgren, Mr. Featherstone and our superintendents, and I gave Mr. Sweetin the instructions to pass on to our Winslow yard, what Mr. Antippas had told us that night in our office, which he did, and those were carried out during the entire job.

Q. Was there any discussion with Mr. Antippas at all on that occasion concerning payment for this work?

A. Yes, there was discussion at that time.

Q. Would you state what that was.

A. I explained to Mr. Antippas this was quite a sum for a small company like ours. He informed me that he would be coming to Seattle at different intervals during the job, and at the recommendation of Mr. Williams and his inspection, that he would advance progress payments and would pay the final

(Testimony of Edward A. Black.)

bill on [22] completion of the work and its acceptance.

Q. Did Mr. Antippas thereafter visit the yard to your knowledge?

A. Mr. Antippas visited our yard on the 4th day of September, 1948. He went to the Winslow yard, and I came over later with Mr. Harry Friedman, who was a machinery dealer here in Seattle, and as I was getting off the ferry at Bainbridge, I met Mr. Antippas getting on the ferry, coming back to Seattle.

The Court: What date was that?

The Witness: September 4th, I believe.

The Court: What year?

The Witness: 1948.

Mr. Howard: I object to the last part of the answer of this witness. It is not responsive to the question.

Q. I will ask you, Mr. Black, did you have any conversation with Mr. Antippas on the occasion of his visit that you have already testified to?

The Court: Does that cure the objection?

Mr. Howard: Yes it does, your Honor.

The Court: You may proceed.

A. I introduced Mr. Antippas to Mr. Friedman. At that time, Mr. Antippas patted me on the back and told me we were doing a wonderful job, that he had gone over [23] the job and he had told Mr. Featherstone in Mr. Williams' presence that as soon as he arrived in New York he would send us a prog-

(Testimony of Edward A. Black.)

ress payment of $30,000, which I thanked him for and explained to him we could certainly use it, as the job was running to be quite a sum, and at that the time the ferry left and Mr. Antippas got on the ferry, and Mr. Friedman and I went on in the yard.

Q. Mr. Black, if you know, did you ever send Mr. Antippas an invoice covering that payment that he mentioned to you on the occasion of your meeting?

A. Yes. Either that same day or the following day, our accountants made up a statement as per instructions of Mr. Williams for $30,000, approved by Mr. Harry Williams, and mailed to New York for progress payment.

Mr. Hokanson: Counsel, do you have that invoice in your possession?

Mr. Howard: We have searched the records, and have been unable to find any such invoice as having been received by the company in New York.

Mr. Hokanson: Counsel, will you stipulate that I requested you orally a few days before the trial to produce the document here in question.

Mr. Howard: Yes, I will so stipulate, and I told you at that time that we would make a search for it, [24] which we have done. I am reporting now we have been unable to find that any such invoice was ever received.

Mr. Hokanson: In view of the testimony and Mr. Howard's statement, I propose to introduce secondary evidence.

(Testimony of Edward A. Black.)

The Court: Are you ready to have it marked for identification at this time?

Mr. Hokanson: Yes, your Honor.

(9-8-48 invoice marked Libelants' Exhibit 2 for Identification.)

Q. Showing you what has been marked for Identification as Libelants' Exhibit 2, I will ask you if you can identify that? A. Yes, I can.

Q. What is it?

A. It is the progress payment asked for for $30,000 from the Urania and owners, which is dated September 8th, the day it was mailed.

Mr. Hokanson: If your Honor please, I will offer this later through another witness.

Q. If you know, did Mr. Antippas send you the $30,000 payment that he mentioned to you on the occasion of your meeting? [25]

A. No, he did not.

Q. Was any money sent at all in connection with that progress payment?

Mr. Howard: If the Court please, I would like to enter an objection to this line of questioning at this time on the ground and for the reason that the pleadings in this case and the testimony in evidence so far do not show that there was any obligation on the part of the ship owner, the claimant in this case, to make any such payment, and therefore testimony as to whether or not such a payment was made would be irrelevant.

The Court: The objection is overruled.

(Testimony of Edward A. Black.)

A. He did make a progress payment, approximately four weeks later, but instead of $30,000, he sent $25,000 to the General Steamship Company, which he informed them to release to us.

Q. Did you receive the $25,000 from General Steam?

A. Yes. At the instructions of Mr. Williams, we changed our billing from $30,000 to $25,000 and sent it in care of General Steamship Company in Seattle, and they in turn issued us a check for a progress payment of $25,000, approximately somewhere around the 1st of October.

Q. During the month of September, 1948, was your Winslow [26] yard engaged in performing work on any other vessel of the claimant corporation?

Mr. Howard: That is objected to as immaterial and irrelevant.

The Court: What is the purpose of it?

Mr. Hokanson: May it please your Honor, this is merely preliminary. I propose to establish the facts surrounding the work on the Pinta, the communication between Commercial Ship Repair and the claimant corporation with reference to the policy concerning payment of repair work done on ships of foreign flags. It is in issue here. Moreover, the document which we propose to introduce after the preliminary foundation is laid, specifically mentions the Urania, and for that reason I feel that it is very relevant and material to the issue here as

(Testimony of Edward A. Black.)

to whether proper notice was given the claimant corporation with respect to payment.

The Court: I will hear you further after the noon hour, and I will hear Mr. Howard further if he wishes to make a statement at that time. Those connected with this case are excused until 1:30.

(At 12:01 o'clock p.m. Thursday, April 7, proceedings recessed until 1:30 o'clock p.m. Thursday, April 7, 1949.) [27]

April 7, 1949, 1:30 o'Clock, P.M.

The Court: Is there something else you wish to state in answer to the Court's question of what is the materiality or purpose of it? If there is something not already said, the Court will give you that opportunity now. There is no need of repeating what you have already said. The only thing that occurs to me that might be said appropriately is whether you will seek to show that the mentioning of the Urania had any connection with this repair job for which the libelants here sue.

Mr. Hokanson: Supplementing what I have already said concerning the objection, a letter which we propose to introduce makes reference to the testimony which has already been given with respect to the progress payment which had been issued as the witness has testified by Mr. Antippas on a date certain. The letter goes further to state generally what arrangements the libelant here would expect concerning payment on the ships in repair at the Winslow yard owned by the claimant corporation.

(Testimony of Edward A. Black.)

The Court: Do you mean the respondent corporation?

Mr. Hokanson: Yes, your Honor. An issue is apparently to be raised here concerning the timeliness of the libel, and I submit to your Honor this document is very material, very relevant to that issue.

The Court: Mr. Howard?

Mr. Howard: If the Court please, I would like to renew my objection to any interrogation of this witness dealing with the account for the repair of the Pinta. I don't believe Counsel's representations to the Court show any grounds requiring that the Court receive or consider evidence as to the repairs, discussions as to the repairs on another vessel claimed to have been owned by the claimant corporation. The libelant pleads an account only on the Urania, and a balance due on that account.

Counsel has referred to some communication which he proposes to offer in evidence, which as I understand deals both with the Pinta and the Urania. If such a document is offered, I don't see that it is necessary, in the first place, for this witness to go into details of the transactions on the Pinta before such document is offered. Furthermore, if the document is offered, the Court must first pass on the admissability of that document. I do not see it is necessary to interrogate this witness as to the Pinta account in order to lay any foundation for offering such a document if it refers also to the Urania account.

(Testimony of Edward A. Black.)

The Court: I think what you should do is to bring forward the document that you think this question objected to may offer preliminary proof, so that it may be more certain that the questions you ask the witness concern the Exhibit to be identified and later offered.

Mr. Hokanson: Mr. Howard, I now ask that you produce the original letter dated September 23rd, addressed to Mr. Antippas, Compania Naviera Limitada.

Mr. Howard: I will produce such letter, subject to reserving my objections.

Mr. Hokanson: If I may be permitted to add this, your Honor: The sole purpose of offering this document is with respect to the matter of putting the respondent corporation on notice as to the requirements of payment by Commercial Ship Repair, and is not intended to prejudice the respondent corporation in any way relating to collateral matter such as the repairs on another vessel. [30]

(9-23-48 Letter marked Libelants' Exhibit 3 for Identification.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 3, I will ask you if you can identify that document. A. I can.

Q. What is it?

A. It is a letter written by me to Mr. P. Antippas in regard to our way that we expect foreign ships working under Panamanian flags to pay their bills.

(Testimony of Edward A. Black.)

Q. Turning to page 2 of the document, do you recognize the signature thereon? A. I do.

Q. Whose signature is it? A. It is mine.

Q. Was that letter mailed, to your knowledge?

A. It was.

Q. On what date?

A. It was mailed on September 23, 1948.

Mr. Hokanson: I offer the document in evidence, your Honor.

Mr. Howard: If the Court please, I object to the admission of this document at this time. This witness is one of the libelants in this case. He is testifying as to what the contract was between [31] the libelant and the claimant corporation owning the respondent vessel. There has been no testimony offered in the record so far of any provision in the contract calling for any particular method of payment until the witness testified independently of this exhibit of any such arrangements, or any distinction between foreign flag vessels and United States flag vessels. I do not see that this document is admissible or has any relevancy to the issues raised by the libelant on the account for the balance of sixty-four thousand and some odd dollars.

The Court: The objection is overruled. This exhibit is now admitted for the limited purpose as stated by counsel who offered it.

(Libelants' Exhibit 3 received in evidence.)

(Testimony of Edward A. Black.)

LIBELANTS' EXHIBIT NO. 3

[Letterhead]

Commercial Ship Repair

September 23, 1948.

Mr. P. Antippas
Compania Naviera Limitada
Panama
c/o Simpson, Spence & Young
52 Broadway
New York City, N. Y.

Dear Mr. Antippas:

We just received your wire and felt very bad in regards to your considering this an unfriendly act. I am sure that you realize that this is customary that all foreign ships leaving repair yards on the Pacific Coast either arrange for payment or make payment in full before leaving the contracter's yard.

We do not want you to feel that we did not trust your company or have any idea of your not paying your bills. This is merely customary, and in checking with General Steamship Co. this morning, who represents you in Seattle, we merely asked them if your company had said anything to them in regards to repair work on the Pinta. They informed us that you had not, however, they said they would contact your office and notify us whether they would receive money from you or you would pay us direct.

We also checked with your representative, Mr. Williams, who also informed us that he had not

(Testimony of Edward A. Black.)

been advised as to how you intended to pay repairs on the Pinta.

If you will check with Mr. Demitri, who was in Seattle approximately ten days ago, he informed us as soon as he returned to New York he would send us a $30,000 progress payment on the Urania. To date we have not received this payment.

We certainly want you to realize that we appreciate your business and the cooperation we have received from your company and your representatives and would not do anything to give you the impression that we mistrusted your company or was in any way unfriendly towards you, in checking with General Steam in regards to money.

If you would write us an outline of whatever way you wish to make payments of your ships while in this port, we would be only too glad to cooperate with you and assure you want your friendship, your business, and will do everything within our power to give you good work and value received.

If there is anything further we can do or say in regards to your feelings, please notify us and we will be only too glad to do so.

We would like to take this opportunity in thanking you for your past cooperation and to assure you that we stand ready to help you at any time.

Very truly yours,

COMMERCIAL SHIP REPAIR,

/s/ E. A. BLACK,

Co-Owner.

EAB:em

Admitted April 7, 1949.

(Testimony of Edward A. Black.)

Q. Did you ever have any telephone conversations with Mr. Antippas subsequent to the date of the letter which you have just identified?

A. I did.

Q. Do you remember when?

A. I talked to Mr. Antippas. He called me from New York. I believe it was the 5th day of October, the 4th or 5th of October, and wanted to know whether or not we would allow the Pinta to go on its trial run, because he had sent us $25,000 instead of his [32] promised $30,000.

Q. Did you mean the Pinta in your testimony?

A. No, I meant the Urania. The Pinta was never taken on sea trial. At that time, in talking to Mr. Antippas, I assured him we would not hold the trial run up on the Urania. However, we expected him before the ship left our yard after the sea run and it was accepted, that he make arrangements or pay us in full for the repair bill when it was accepted, which he assured me that he would do.

Q. Did you ever have any discussions with Mr. Harry F. Williams in the month of October concerning the payment for the repairs and alterations to the Urania? A. I did.

Q. Do you remember when? A. Yes.

Q. What date?

A. I talked to Mr. Harry Williams on the 8th day of October, 1948 in my office at Pier 66 in Seattle.

Q. Would you explain what that discussion was?

(Testimony of Edward A. Black.)

A. Mr. Williams had just arrived from Winslow after agreeing with Mr. Lindgren——

The Court: I do not believe that is responsive. He asked you what the conversation was. [33]

The Witness: Pardon me, your Honor. I was trying to bring out——

Q. Just answer the question.

A. Would you state your question again?

The Court: Read the question.

(Last question read by the reporter.)

A. Mr. Williams was in my office with signed bills and informed me that he was leaving for New York and was to meet Mr. Antippas on Monday morning, October 11. I told Mr. Williams at that time that we would not allow the Urania to leave our yard unless we received payment for repair work done aboard this ship before time of departure. Mr. Williams assured me that he would see Mr. Antippas Monday morning as per Mr. Antippas' request, and we would be hearing from them either Monday or Tuesday, or at least before the ship would leave our yard.

I might also say that present in that discussion was Mr. Featherstone and some other people were there that night. I believe Mr. Finn was at the office that night.

Q. Did you receive any communication from the claimant corporation at any time prior to October 14 concerning payment of that account? [34]

A. I did not.

(Testimony of Edward A. Black.)

Q. Did you make any effort to communicate with the claimant corporation prior to October 14 concerning this account? A. Yes.

Q. What was that?

A. I talked to my partner, Mr. Featherstone, and he called Mr. Williams on Monday night, October 11, to see why we had not heard from Mr. Antippas. He also called him again on Tuesday night to see why we had not heard from Mr. Antippas in regard to our bill. Mr. Williams informed Mr.——

Q. Testify only to what you know of your own knowledge. Did you receive any communication——

A. No.

Q. ——from the Compania Naviera Limitada prior to October 14?

A. I did not. I might also state——

Q. Just respond to my questions, please. When were you informed as to the sailing date of the Urania?

A. I was informed approximately three o'clock on Wednesday, October 13, 1948.

Q. By whom? A. By Mr. Featherstone.

Q. Did you ever talk to the master of the vessel on [35] that date? A. No.

Q. What did you then do?

A. I then called General Steam, talked to Mr. Stan Lund, telling him I had been informed from Mr. Featherstone at Winslow that the Captain had said he was leaving the following morning. I asked

(Testimony of Edward A. Black.)

Mr. Lund if he had received any information from Mr. Antippas in regard to our bill.

Mr. Howard: I am going to object to what he asked Mr. Lund. I think that is strictly hearsay, as to any conversation he had with Mr. Lund concerning this, if the Court please.

Mr. Hokanson: It has not been established at this time as to the agency of the General Steamship Corporation, but it can be established and will be established that the General Steamship Corporation was the agent for the claimant corporation here in Seattle at this time, and on that basis, I submit that statements made to or by Mr. Lund as their representative would be admissible outside the hearsay rule on the grounds that the admission against interest on the part of the party to this acion.

The Court: Is it or is it not in evidence that the part payment of $25,000 was made on behalf of the respondent corporation by the General Steamship Corporation?

Mr. Hokanson: That is correct, your Honor.

Mr. Howard: I don't believe that that has been established by the testimony yet.

The Court: Has it been testified to? It might not have been sufficiently established from the standpoint of the respondent corporation, admitting that it was done, but is there testimony to that effect?

Mr. Howard: In a preliminary way.

Mr. Hokanson: Mr. Black has testified they received $25,000 from the General Steamship Corporation.

(Testimony of Edward A. Black.)

The Court: The objection is overruled.

A. Mr. Lund informed me that he had not received any payment or any information in regard to how Mr. Antippas was going to pay this bill, and he wanted to inform me that the General Steamship Company would not in any way be responsible for the bill, and it was up to us to protect our own selves in regard to the repair work we did aboard the Urania.

Q. Did you then on that date cause a libel to be issued out of this Court against the vessel Urania?

Mr. Howard: Objected to as a leading question.

The Court: Sustained. Ask what he did, what else did he do on that date?

Q. What else did you do on that date?

A. I then tried to place a call to New York to Mr. Antippas. However, by that time it was approximately 3:30 in Seattle, making it 6:30 in New York, and I could get no one on the phone. I then placed a call to Mr. Hokanson and——

The Court: Who is he?

The Witness: Mr. Hokanson is our lawyer, and I asked him to get libel procedures out for the Urania, as we were informed that——

The Court: I do not think you should say what you were informed, what you said to Mr. Hokanson you were informed. You can say what you did in respect to Mr. Hokanson.

The Witness: Telling him that we would like it libelled that night, on the 13th.

(Testimony of Edward A. Black.)

The Court: With what result? What was done after that?

The Witness: Mr. Hokanson then had very little time to act.

Mr. Howard: I object to that, if the Court please.

The Witness: Papers were then properly drawn, and the ship was libelled approximately 8:00 p.m. on [38] the 13th at Winslow.

The Court: On what date?

The Witness: October 13, Your Honor.

The Court: Is that the date that the libel was filed in this case?

Mr. Howard: Yes, it is, Your Honor.

Q. Who was the manager of the Winslow yard at that time from *from* August 6 to October 13, 1948? A. Mr. Arthur Lindgren.

Q. Employed by you? A. He was.

Q. What were his duties at that time?

A. His duties were in charge of the entire Winslow operation with authority to act in our behalf in any way that he saw fit.

Q. Did that authority extend to negotiating prices on contracts for repair work?

A. It did.

Mr. Howard: That is a leading question again.

The Court: Sustained.

Q. What further duties, if any, did Mr. Lindgren have during that period?

A. Mr. Lindgren had duties of writing up additional work and dealing directly with Mr. Williams in regard to work being carried on aboard the

(Testimony of Edward A. Black.)

Urania, [39] and duties in any kind of negotiations either to cost of jobs or final negotiations as to price.

Q. Does the Commercial Ship Repair have contracts with any Government agencies for the repair, alteration or renewal of Government ships?

Mr. Howard: That is objected to as not being material to the issues in this case.

The Court: Upon what issue in this case does the answer you seek by that question relate or bear?

Mr. Hokanson: Your Honor has indicated earlier that it should be established, or your suggestion that it should be established by witnesses here what qualifications this shipyard had to repair vessels.

The Court: Whether it is a competent ship repair?

Mr. Hokanson: Yes, Your Honor.

The Court: Do you seek to elicit an answer by this question which bears upon that?

Mr. Hokanson: Yes, Your Honor. I seek now to develop by Mr. Black the competency of the Commercial Ship Repair to do work of the type involved on the vessel Urania, and the experience and background of their personnel.

The Court: The objection is overruled. [40]

The Witness: Yes, we have a master lump sum contract with the United States Maritime Commission.

The Court: He says, "we have." You may now

(Testimony of Edward A. Black.)

be equipped, but we are concerned with at or before the time.

Mr. Hokanson: Yes, Your Honor, I will rephrase the question.

Q. (By Mr. Hokanson): Did you on or before August, 1948, have any contract or contracts with Government agencies for the repair of vessels?

A. We did. We had a contract with the United States Army, a master lump sum contract for repair and conversion, with the United States Navy, with the United States Maritime Commission, and the United States Coast Guard.

Q. For how long had you held those contracts?

A. We had held those contracts from the time that we entered business, or shortly after.

Q. Have you ever done work pursuant to those contracts prior to August 1948?

A. Yes. We had a job for the United States Maritime Commission on a Navy tanker.

The Court: What, if any, repair work or [40-A] alteration work did you do on that vessel?

The Witness: We did a complete alteration, bringing it from a dead ship up to operation under classification, the total contract being $459,600. Work was completed in 36 calendar days.

The Court: What kind of work was done? What was the nature of the alterations?

The Witness: The alterations were, Your Honor, overhauling the entire engine room, putting the boilers through annual, building new crew's quarters.

(Testimony of Edward A. Black.)

The Court: Annual what?

The Witness: Annual inspection.

The Court: You mean conditioning the boilers so that they might be expected to better meet the requirements of inspection?

The Witness: Yes, Your Honor. The ship was a dead ship in lay up. It was tied to our yard. We had to do all the necessary requirements of the Coast Guard in order to put the vessel in operation, such as renewing the brick work, cleaning the tubes, fitting the valves, relagging steel pipes, putting hydrostatic tests on the boiler, open up all gunwales throughout [41] the engine room, and working over all the pumps and the motors, the ventilation system, building new crew's quarters for the crew, installing additional showers, installing new furniture, putting in maronite bulkheads in order to bring it from a Navy to a standard cargo tanker which would be accepted by the classification—when I say classification, I mean the American Bureau. This was all done to the complete satisfaction of the Maritime Commission inspectors, the U. S. Coast Guard inspectors and the American Bureau.

Q. You mean that was one job done for the Maritime Commission? Were there other jobs pursuant to these contracts?

A. Yes. We have done in the past year over 300 different vessels of all types for the Army, for the Coast Guard, for private owners, and for the Mari-

(Testimony of Edward A. Black.)

time Commission. We also worked on a—the reason I am picking out special jobs is to try to establish to the Court that our yard had——

Mr. Howard: Just a moment.

The Court: Proceed by question and answer. Do not give your reasons. Let the questions develop the reasons without your volunteering them. Ask him another question. [42]

Q. How many vessels have been repaired at your Winslow yard, if you know, in the past year?

The Court: Do you mean prior to the beginning of this work?

Q. I will add this qualification, prior to August, 1948, and during the period that you owned the yard.

A. I would say approximately 50 vessels.

Q. Did you, during the period prior to August, 1948, repair vessels other than those owned by government agencies? A. We did.

Q. Would you state what type of vessels?

A. Cargo vessels such as Liberty ships, Victory ships, C-1, C-2, and C-3, companies such as American Mail Line, American-Hawaiian Lines, Pope & Talbot, Sudden and Christenson, Waterman Steamship Company, and various other leading companies in the shipping business.

Q. Where did you draw your personnel when you started the job on the Urania?

A. Our main organization was working for us,

(Testimony of Edward A. Black.)

and they had been in the Winslow yard for the past fifteen to twenty years, working in various crafts.

Q. How old is the Winslow yard?

A. I believe it is—— [43]

Mr. Howard: I object to that. This witness has testified that the Commercial Ship Repair started operations in April of 1946. I don't see it is material how old the yard is.

The Court: The Court is not entirely certain about this, but I have the impression that this witness at a stage earlier than this in his testimony, made some reference to some relationship or historical connection between the present ship repair concern and the Winslow Marine Ship Yard.

Mr. Howard: I will withdraw my objection.

A. The Winslow yard is approximately 42 years old, and in this yard from the time of its conception, there are some supervisors who are still working for us that worked there during the——

Mr. Howard: I move to strike that part of the answer as not responsive to the question.

The Court: It will be stricken.

Q. There are people in your employ and were there at this time in August, 1948 who had been employed in the Winslow yard prior to your purchase of it?

A. Yes. We had men in every craft who had been with the Winslow Marine for a long period of time, some of them as long as 30 years, and are still working for us, and were working for us at the time that the [44] Urania was undergoing repairs.

(Testimony of Edward A. Black.)

Q. What was the number of employees in your Winslow yard in August, 1948 if you remember?

A. Approximately 125.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. What was your business or occupation before 1941?

A. I was a sales manager at Totem Pontiac.

Q. For how long? A. For one year.

Q. Have you ever been to sea, serving on ships?

A. I have been to sea with the Naval Unit of the University of Washington on the U. S. S. Tennessee in 1945, to Honolulu and back.

Q. Is that your only sea experience?

A. Besides taking all the trial runs on seventeen Navy vessels and other repair jobs done at Winslow.

Q. What licenses do you hold, if any as an engineer or deck officer? A. I do not hold any.

Q. Are you a graduate of the University of Washington? A. No.

Q. Where did you obtain your college education?

A. University of Washington.

Q. You didn't graduate?

A. I did not graduate, no.

Q. What type of course did you take at the university?

A. I took one year of engineering, pre-engineering, business administration, and I had some studies in forestry.

(Testimony of Edward A. Black.)

The Court: Before questioning along this line is completed by all counsel connected with the case, I would like to have information as to whether or not there was any superintendent, any foreman, any person in the employ of this concern who had had any previous experience, and what sort of experience in work of this kind did such employees have? The Court is not sufficiently advised on this yet. I advise both counsel of that fact.

Mr. Hokanson: I propose to introduce considerable evidence on that, but I feel it would be better to introduce it by the witness himself rather than have Mr. Black testify to those qualifications.

Q. Did you have a gentleman by the name of Mr. Copeland working in your yard? A. Yes.

Mr. Hokanson: I object to that, Your Honor. He is not directly related. [46]

The Court: The objection is overruled.

Q. In what capacity was Mr. Copeland employed by you?

A. Mr. Copeland was Yard Manager.

Q. At Winslow? A. Yes.

Q. Is he in your employ now? A. No.

Q. When did he leave your employ?

A. He left before August 4th, I think it was sometime in the—I believe it was the 1st of August when he left our employ.

Mr. Hokanson: All of this examination is over my objection as not being related to the direct examination.

(Testimony of Edward A. Black.)

The Court: The objection is overruled. I might say that perhaps you are reluctant to do so, but pursuant to the Court's suggestion, or pursuant to some other inspiration, counsel for libelants did inquire of this witness concerning the qualifications of the libelants to do this job. That is a general subject and this falls within that general subject and it is proper cross-examination.

Mr. Hokanson: The witness having testified that he left prior to August 4th, 1948, I submit it would have no relevancy so far as this particular job is concerned.

The Court: The objection is overruled.

Mr. Howard: I would like to have this document marked as an Exhibit.

(8-4-48 letter marked Respondent's Exhibit A-1 for Identification.)

Q. Would you tell us what the capacity of your yard at Winslow is so far as dry docking of ships?

A. Four thousand ton marine railway.

Q. Many of these ships you refer to as having been repaired at your yard could not be dry docked there? A. That is right.

Q. Handing you what has been marked for identification as Respondent's Exhibit A-1, can you state what that is? A. It is a bid form.

Q. Does that document contain your signature?

A. It does.

Q. Do you recognize that as a letter that was prepared by you or under your supervision?

(Testimony of Edward A. Black.)

A. I do.

Q. Will you state to the Court please what relation that document has to the negotiations that you had conducted with the owners of the Tanker, Urania for [48] performing repairs or other services on that vessel in the fall of 1948?

A. It has the price on there of the original contract; not including the $1500 for the chart room.

Q. Does that document represent your written confirmation to the owners of the tanker of the price quoted for performance of this work?

A. It was not a confirmation. It was the original bid.

Q. And the amount of that again. please?

A. $39,780.

Q. Referring again to A-1, will you state what the figure is that is written in in ink on that document?

A. The figure is $40,155. which includes the $300 additional item, plus the $75 additional item which was agreed upon between Mr. Antippas and myself in respect to item 48 and 49, and added on to the $39,780. $375 brings a total of $40,155.

Q. In your letter or this document A-1 you now have before you. did you make any reference to the time required for the completion of these repairs?

A. Yes.

Q. What was that, please?

A. Eighteen working days.

Q. It is so stated in the document?

(Testimony of Edward A. Black.)

A. That is right. [49]

Q. I ask you again, does this document A-1 represent your written bid to the owners of the tanker for performance of this work on the tanker, Urania?

A. It represents a written bid with the exception that we in this written bid refer to the specifications which Mr. Antippas brought with him from New York, but which our price and our bid was representing from the specifications that were drawn and bid by Mr. Sweetin.

Q. Was any other letter or document sent by you to the owners of the respondent vessel setting forth the terms and conditions under which you proposed to undertake this work?

A. No, not to my knowledge.

Q. Then, does this represent the proposal that you made to them with the limitations you have mentioned as to the item of $1500?

A. It does, with the exception which I so stated.

Q. That is as to the $1500?

A. In that the specifications which we were bidding on—and it was understood by Mr. Antippas and Mr. Williams in our office on the final negotiations, the exact items that we were bidding on, they were so priced by items, and if added up by items, they will total the total sum as in our bid. [50]

Mr. Howard: I offer Respondent Exhibit A-1.

The Court: It is admitted.

(Testimony of Edward A. Black.)

Mr. Hokanson: May I examine the witness, your Honor, concerning this document?

The Court: Yes, you may, limited to the admissibility of this document. I will say that in the future I will try to pause for a moment after an offer of an Exhibit is stated to see if there is any objection to be noted. If I hear no response to the offer, the Court will then rule. If I hear any response, any objection or any request, I will consider that.

You may proceed now.

Mr. Hokanson: You state that the document which has been identified represents your agreement to perform the work, the time within which the work should be performed, and the amount of your original bid, is that correct?

The Witness: That is correct.

Mr. Hokanson: What was the understanding insofar as the specifications were concerned with respect to which that letter was signed?

Mr. Howard: I object to that as improper cross-examination insofar as the admissibility of this document is concerned. [51]

The Court: The objection is sustained.

The question is whether or not this Exhibit relates to the subject matter, or any issue in this litigation. What was developed on direct examination concerning the document indicated it was related to some phase or phases of this litigation, this repair job. If it does, it is admissible.

(Testimony of Edward A. Black.)

As to how much proof it contains, that is a matter for the fact tryer to determine. If it contains any statement relating to anything that enters into consideration of the matters and things alleged in these pleadings, then this is a proper Exhibit. You may disagree with the proof therein contained, but if it relevant, it is admissable. Proceed.

Mr. Howard: No further questions at this time, your Honor.

Mr. Howard: I re-offer A-1.

The Court: The Court's ruling will stand. It is already admitted.

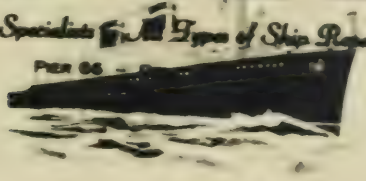
(Respondent's Exhibit A-1 received in Evidence.)

TELEPHONE MAIN 3122

COMMERCIAL SHIP REPAIR

Specialists in All Types of Ship Repairs

PIER 66 - [illegible]



No. 12312
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
AUG 9 - 1949
PAUL P. O'BRIEN
CLERK

Respondent Exhibit A-1
Apr 7 - 1949

August 4, 1948

Compania Navier Limitada Panama
c/o General Steamship Co.
Seattle, Washington

Gentlemen:

Pursuant to the Invitation for Bids, Instructions to Bidders, and Specifications for Repairs, Renewals, Alterations and Additions to the vessel EX U.S. Navy Tanker Y073, dated June 25, 1948, all of which are made a part hereof, the undersigned hereby offers faithfully to perform all repairs, renewals, alterations and additions to said vessel in accordance with said specifications and plans for the sum of Thirty-nine thousand seven hundred and eighty dollars ($39,780.00) and to complete such work in Eighteen (18) working days.

$40,155

Very truly yours,

COMMERCIAL SHIP REPAIR

E. A. Black

E. A. Black
Co-Owner

August 4, 52

(Testimony of Edward A. Black.)

Q. Is there anything in your letter identified now as [52] Exhibit A-1 specifying that any payments are to be made for the work performed before the completion of the job?

Mr. Hokanson: I object to that on the ground that the document speaks for itself.

The Court: Read the question.

(Last question read by reporter.)

The Court: It is cross-examination in effect asking for his understanding of the purport of the letter and the objection is overruled. On direct examination, the question would not be proper, but on cross-examination, I believe it is. You may answer.

A. There is no reason in this particular bid form to put in qualifications of the payment, as it was merely a bid, and when the bid was made we did not know we would be low bidders or that the ship would be awarded to us.

Q. Was there subsequently any contract reduced to writing which provided for progress payments in advance of the completion of the work on the tanker, Urania?

A. No, it was all discussed in my office.

Q. I asked you if there was anything in writing on it.

A. No. Well, there is in that letter I wrote Mr. Antippas [53] in regard to another bill that they owed us.

The Court: Let us have in mind that we need to

(Testimony of Edward A. Black.)

be constantly finding ways and means of expediting rather than hesitating the progress of the interrogation of witnesses.

(10-4-48 Invoice marked Respondent's Exhibit A-2 for Identification.)

Q. Handing you what has been marked for Identification as Exhibit A-2, can you state what that document is, please? A. I can.

Q. What is it?

A. It is the bill to General Steam for progressive payment of $25,000 for work performed aboard the Urania.

Q. Does it carry a date?

A. Yes, October 4th.

Q. Does that document have your signature on it? A. It does.

Q. In what connection?

A. Showing that we received payment.

Q. Of the $25,000? [54] A. Yes.

Mr. Howard: I offer that in evidence.

Mr. Hokanson: No objection.

The Court: Admitted.

(Respondent's Exhibit A-2 received in evidence.)

12322

INVOICE

Specialists in All Types of Ship Repairs

CAUSE 15-66 RESPONDENT EXHIBIT APR 1949 ADMITTED

COMMERCIAL [redacted]EPAIR

[redacted] PIER 36 — SOUTH STREET TERMINAL

SEATTLE 7, WASHINGTON

TELEPHONE MAIN 3122

M.T. "Urania" and Owners
Compania Navier Limitada Panama
c/o General Steamship Co
1211 Fourth Avenue
Seattle, Washington

NET CASH

Invoice Date October 4, 1948
Invoice No 9-2 Winslow Div.
Requisition No
Contract No 9-1
Via Job Order No. 677

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	Progress Billing No. 1.		
	To progress payment No. 1 a/c repair and alteration to M.T. "Urania"		$25,000.00 ✓

TONNAGE O.K	RATES O.K	COMPUTATION O.K.	APPROVED	CHARGE NO
		✓	MH	-2061
M/T Urania				

APPROVED:

H F Williams
Mr. H. F. Williams
Owners' Representative

PAID
COMMERCIAL SHIP REPAIR
BY Eastlack

Ltr. 11/9.55

(102)

(Testimony of Edward A. Black.)

(10-13-48 Telegram marked Respondent's Exhibit A-3 for Identification.)

Q. Handing you what has been marked for Identification as Exhibit A-3, can you identify that document? A. I can.

Q. Will you state what that is, please?

A. It is a telegram sent to Mr. Antippas on the 13th of October, telling him that——

The Court: That is not necessary.

A. sent to him by——

Q. Who was the sender of that telegram?

A. Mr. J. J. Featherstone, co-owner.

Q. Do you have personal knowledge of the time of day at which that was sent? A. Yes.

Q. When?

A. Approximately nine o'clock, p.m. [55]

The Court: What date, if you know?

The Witness: October 13th.

Q. That is Pacific Standard Time?

T. That is right.

Q. And that was sent then after the ship had been libelled?

A. That is correct.

Mr. Howard: I offer that in evidence.

Mr. Hokanson: No objection.

The Court: Admitted.

(Respondent's Exhibit A-3 received in evidence.)

(Testimony of Edward A. Black.)

RESPONDENT'S EXHIBIT A-3

[Telegraph Form]

Western

Union

Sea360 Long NL PD 2 Extra-Wux Seattle Wash 13
Demetri Antippas-Compania Naviera Limitada
Panama Care Simpson Spence and Young NYK
Oct 13 PM 11:53

We are informed that Urania has arranged to sail eight AM 14 October 1948 stop Inasmuch as we have not received payment or consideration for same for performance of work on subject vessel this is to advise you that we are proceeding to libel vessel to insure payment of our invoices totalling 89,366.75 less payment of 25,000.00 stop We regret necessity for this action however at not having heard from you and this being a foreign flag vessel you will appreciate our concern stop We suggest you call Commercial ship repair J J Featherstone co-owner AM 14 1948 89,366.75 25,000.00.

Admitted April 7, 1949.

Q. Prior to sending of that telegram, had you made any demand upon the owner for payment of the repair bill? A. Yes.

Q. State what demands were made and to whom?

A. I made demand directly to Mr. Williams and

(Testimony of Edward A. Black.)

also to Mr. Antippas when he called me on the phone from New York.

Q. And that was on what date that he called you? A. October 4th.

Q. Was that conversation that you had on the telephone with Mr. Antippas relative to the full payment of [56] the bill, or was it relative to progress payment?

A. It was relative to the full payment of the bill, because we had already received our progress payment.

Q. Were you aware of the fact that General Steamship Corporation was acting in certain capacities as representing the owner of the vessel at Seattle? A. Yes.

Q. Prior to October 13th, had you made any demand upon General Steamship Corporation in Seattle of all or any portion of this account?

A. Yes.

Q. State your best recollection of when and to whom such demand was made.

A. I contacted Mr. Lund sometime on Monday afternoon, asking him if he had heard anything from Mr. Antippas in regard to the bills which Mr. Williams took with him to New York on Friday.

Q. Monday afternoon would be what date?

A. October 12th, I believe, or maybe it is the 11th, I would have to look. I would say the 11th.

Q. That is the only demand you made on General Steam at Seattle?

(Testimony of Edward A. Black.)

A. I made another one on Wednesday, the 13th, seeing if there had been any final payment received.

Q. Did you discuss the matter of this account with Mr. [57] Williams as to whether a payment was expected before the owners reviewed the account?

A. Mr. Williams was informed that before the ship would leave, the owners would have to pay the bill in full, and that is the reason that he left immediately upon completion, so he could review the bills with Mr. Antippas on Monday morning, October 11th, in Mr. Antippas' office in New York, so he could go over the bills with Mr. Antippas, but Mr. Antippas——

Q. That answers my question, I believe. In Libelants' Exhibit 3, you have made reference to foreign flag vessels. Is there some particular reason for making a distinction on foreign flag vessels?

A. There certainly is.

Q. Explain what that is, please.

A. On a foreign flag vessel under the Panamanian flag, owned by foreign owners, for operating as a foreign vessel, the ship may leave these waters and never return to the United States. If the owner so desires to keep it foreign, there is no way then that we could protect ourselves but libeling said vessel, unless it would return to a United States port. The difference between that and American flag vessels is that most of the American flag vessels are [58] represented locally and owned by people

(Testimony of Edward A. Black.)

who you can attach one of their ships or the particular ship that is operating within the waters of the United States at a later date to protect your bill.

Q. In other words, you require a different standard of payment as to foreign flag vessels than you do as to United States flag vessels?

A. We require that all foreign vessels pay their bills before they leave. However, people that have established themselves with us, and are American companies, we do not demand them to pay us before they take their vessels from our yard.

Q. Did you so indicate to Mr. Antippas at the time this job was undertaken? A. Yes.

Q. Did you make any effort to call Mr. Antippas on the telephone before October 13th?

A. No.

Mr. Hokanson: That is objected to as having already been covered, your Honor.

The Court: It is already answered. It will stand.

Q. Why didn't you endeavor to call him about this account?

A. The reason I didn't endeavor to call Mr. Antippas direct is because we were told by Mr. Antippas that [59] Mr. Williams was the man we should do business with, negotiate prices with, take all job orders and work with, and I didn't feel that I wanted to put Mr. Williams on the spot by going over his head to Mr. Antippas when he had left our place on Friday night to fly to New York to go

(Testimony of Edward A. Black.)

over bills with Mr. Antippas, with the understanding that Mr. Antippas would check the bills with him Monday, and then would get in touch with us or send payment through General Steam before the ship left the yard.

Mr. Howard: I have no further questions, Your Honor.

The Court: Any questions on redirect examination?

Redirect Examination

By Mr. Hokanson:

Q. In testifying that you did not call Mr. Antippas or attempt to call him, you have reference to dates prior to October 13, 1948?

A. Yes. I think that was the question.

Q. You have earlier indicated in your testimony that you attempted to call him on October 13, but because of the lateness of the hour, you were unable to reach him? A. That is right.

Q. At the time of that attempt to call him, you had been informed of the sailing of the vessel? [60]

A. Correct.

Mr. Howard: I object to that as a leading question.

The Court: The objection is sustained. If you want to know the reason, you can ask him why, if it is material.

Mr. Hokanson: I will pass it, Your Honor.

Q. What do you do in your business as Commercial Ship Repair, you individually? What are your duties?

(Testimony of Edward A. Black.)

A. My duties are checking over estimates, general supervision over our jobs through our superintendents, dealing with the different contracts, dealing with the different governmental agencies, dealing with the banks, and in general, over-all overseer of the entire operation.

Q. Do you maintain your offices at Winslow or in Seattle?

Mr. Howard: I object to that as leading.

The Court: Sustained.

Q. Where do you maintain your offices?

A. My office is at Pier 66 in Seattle.

Q. Were you directly engaged in any supervisory capacity in connection with the repairs, alterations and renewals of the Urania?

A. Not after the final negotiations. The ship was then sent to Winslow and was under the Winslow supervisors. [61]

Mr. Hokanson: No further questions.

Recross-Examination

By Mr. Howard:

Q. As I understand your testimony on redirect examination, then you didn't attempt to contact the owners directly as to your intentions with respect to the repair bill until after the libel had been served and the vessel arrested?

A. The olny attempt, as I so stated, was through Mr. Williams, and Mr. Williams was contacted at his home both on Monday and on Tuesday to see if

(Testimony of Edward A. Black.)

he had—if Mr. Antippas had gotten together with Mr. Williams.

Q. But you didn't send a telegram or call the owners until after the libel had been filed?

A. We expected payment, Mr. Howard, is the reason we didn't.

Q. I am just asking you the fact.

A. Pardon me.

Mr. Howard: No further questions.

The Court: Call the next witness.

(Witness excused.)

Mr. Hokanson: Call Mr. Lindgren. [62]

ARTHUR LINDGREN

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name. A. Arthur Lindgren.

Q. What is your residence?

A. Winslow, Washington.

Q. What is your employment?

A. General manager of Commercial Ship Repair, Winslow division.

Q. Were you so employed during the year of 1948? A. I was.

Q. How long have you been employed at the Winslow yard?

(Testimony of Arthur Lindgren.)

A. Are you speaking now at the Commercial Ship Repair, or at the yard?

Q. By Commercial Ship Repair.

A. Since December 17, 1947. May I add then that since the co-partners, Black & Featherstone, acquired the yard in December 1947. [63]

The Court: He first said December 17, 1947. I understood him to say that.

The Witness: That is right.

Q. Prior to that time, what was your employment?

A. I was employed by the Winslow Marine Railway & Shipbuilding Company.

Q. Where? A. At Winslow.

Q. In what capacity?

A. As general manager.

Q. For how long a period had you been general manager?

A. For approximately a year and a half.

Q. Prior to that, what was your employment?

A. Assistant general manager.

Q. For how long a period?

A. Approximately eight years.

Q. Prior to that, what was your employment?

A. Superintendent.

Q. Of what? A. Of the yard.

Q. Where? A. At Winslow.

Q. For how long a period?

A. Approximately a year and a half. [64]

Q. What is your total shipyard experience?

(Testimony of Arthur Lindgren.)

A. I was first employed there in 1921.

The Court: Give us the years.

The Witness: January 1921 until the present time.

The Court: How many years do you estimate that may be?

The Witness: 28, approximately.

Q. During that period, you have acted in the capacity of superintendent of the yard?

A. For a short period.

Q. What was your training and experience which lead to your position as manager of the yard?

A. Principally in the business end—I should say the business administration of the yard.

Q. What do your duties consist of as manager of the yard for Commercial Ship Repair?

A. General supervision of all its operations, such as obtaining of contracts, estimating, making prices, making business contacts for the purpose of obtaining business, negotiating various contracts with either Government agencies or private individuals, private corporations, the hiring, etc., of supervisors.

The Court: I would like for somebody to ask this witness who was helping him to do the work on [65] the date that this work was commenced, and go directly and promptly and concisely to the question of the competency of the personnel of this plant on the day that this work was commenced and during the time it was going on. Do not delay, just

(Testimony of Arthur Lindgren.)

give the appearance that you are expediting the examination and avoid giving the appearance that you are being too deliberate. The pace of this trial is altogether too slow.

Q. Would you state who the supervisors were at Winslow during the period from August 1948 through the middle of October 1948?

A. General superintendent was Mr. O. H. Lillehei.

Q. What is Mr. Lillehei's background, if you know?

A. As I recall it, he served his apprenticeship in the Bremerton Navy Yard as a machinist, worked there in various capacities in the planning and estimating department, for quite a period was connected with the office of the industrial manager in Seattle of the Navy Department, was employed by ourselves from 1940 to—when I say ourselves, I am now referring to the Winslow Marine Railway & Shipbuilding Company—to approximately December, 1945, was reemployed by the present Commercial Ship Repair Company.

Q. What capacity did Mr. Lillehei have at the Winslow yard during the war years?

A. First he worked as, I believe, a planner and [66] estimater, then an outside superintendent, then in various capacities in charge of outfitting of newly constructed naval vessels. During this period, of course, he had also general supervision of certain types of repair and conversion work, both

(Testimony of Arthur Lindgren.)

on Army, Navy and commercial vessels. In other words, during this 7 or 8 year period, he held approximately 4 or 5 different capacities.

The Court: Is that Mr. Lillehei?

The Witness: Yes, sir.

The Court: His employment comprises what, briefly, by way of resume?

The Witness: That of planner, estimater, outside superintendent, machinery superintendent, and finally assistant general superintendent.

Q. Who were the other supervisors?

A. At the time of the Urania?

Q. Yes.

A. The machinist foreman was Mr. Harold L. Woodman.

Q. State, if you know, what his background and experience is.

A. He served his apprenticeship at the Winslow Marine Railway & Shipbuilding Company from approximately 1916 to 1920. He holds a chief engineer's license for any ocean. He travelled extensively between Seattle, Europe and the Orient as a second, third, first and assistant on [67] vessels such as the President McKinley, vessels of that class. Then he worked for possibly four years in the Navy Yard as a first-class machinist. Following that time, since approximately 1930 to 1940, he was employed as a machinist foreman in the Winslow Yard. During the war period, he was general superintendent of the second shift, in complete charge of all operations.

(Testimony of Arthur Lindgren.)

Q. Where?

A. And is at present employed as machinist foreman.

Q. Who were the other supervisors during this period? A. Mr. Walter W. Oakland.

Q. What do you know of his qualifications?

A. He is employed at present as pipefitter foreman.

Q. Do you know his background and experience?

A. He has been employed at the Winslow yard since approximately—of my own knowledge, 1921, by hearsay, 1918.

Q. Is he now employed there?

A. He is now employed as pipefitter foreman.

Q. And was during the period of the Urania repairs? A. Correct.

Q. Who was the shipwright foreman?

A. The shipwright foreman is Mr. Andrew Gilmore.

Q. What is his background, if you know?

A. His background is approximately the same as that [68] of Mr. Oakland. To my knowledge, he has been employed at the plant in various capacities since 1921.

Q. Who was the steel foreman during this period? A. There were several.

Q. Who were they?

A. Two, namely, one was Mr. Elihu Pierce. The other was Mr. James Woodside.

(Testimony of Arthur Lindgren.)

Q. What is Mr. Pierce's background, if you know?

A. His background, so far as I know from personal observation, was foreman in charge of steel construction; that is, new construction of naval vessels, for a period of about 5 years at Winslow. Previous to that, according to his recommendation, he had spent about three years with the Newport News Shipbuilding & Dry Dock Company.

Q. What about Mr. Woodside?

A. Mr. Woodside has been employed intermittently at Winslow going back a period, to my knowledge, of possibly 20 years. Recently, for the past three years, he has been steel construction and steel ship repair foreman.

Q. Who was the electrical foreman during this period? A. Mr. Harold Wells.

Q. Do you know what his background is?

A. To my knowledge, his background consists of approximately 5 years spent in the equipping and outfitting [69] of naval vessels at Winslow. Previous to that, I have no personal knowledge.

Q. Who was the paint foreman?

A. The paint foreman was Mr. Pete Larson.

Q. Do you know his background?

A. I know him personally for a period of possibly 15 years, and he was employed by us all during the war period, I would say from 1942 for the duration, and since then has been employed by the new company, the Commercial Ship Repair, both on the Winslow side and Seattle operations.

(Testimony of Arthur Lindgren.)

Q. Who was the rigger foreman?

A. The rigger foreman at present is Mr.—I am sorry, I don't recall his name.

The Court: Was he such in August 1948, the man you are trying to think of?

The Witness: No.

The Court: Who was then?

The Witness: Mr. L. Pallender.

Q. Do you know anything of his background?

A. Not too much. I know he was a thoroughly competent man at the time he was employed by us.

Q. Who was drydock foreman during this period? A. Earl Callaham.

Q. Do you know anything about his qualifications or background? [70]

A. From personal——

The Court: What was his classification?

The Witness: Drydock foreman, otherwise known as dockmaster. He has been employed by the Winslow Marine Railway since approximately 1930, for a period of about 8 years, I would say, as a laborer leadman, and approximately 3 years as a laborer foreman, 2 years as an assistant dockmaster, and since the death of the old dockmaster, which occurred in 1944, he has been dockmaster to the present time.

Mr. Howard: I am sorry, I can't hear you.

The Court: Three years labor foreman, two years assistant dockmaster, from 1944 to the present time dockmaster.

(Testimony of Arthur Lindgren.)

Mr. Howard: Thank you.

Q. Do you have a Mr. Ekholm over there, or did you have during this period? A. Yes, sir.

Q. What capacity did he serve in?

A. He is shipwright foreman.

Q. What do you know of his background?

A. He has been employed at the yard since I have been there.

Q. In what capacity?

A. By hearsay again, I believe his experience goes [71] back probably 15 years before that. He is now shipwright foreman.

The Court: Was he such in 1948, in August?

The Witness: He was. Am I allowed to make a correction, sir?

The Court: Yes.

The Witness: Counsel asked me the first time who was the shipwright foreman. There is a distinction between Mr. Gilmore, who I stated was shipwright foreman, and Mr. Ekholm. Mr. Gilmore is properly the joiner foreman.

Q. Who was the labor foreman during this period? A. Mr. Earl Callaham.

Q. You have already discussed him?

A. Yes.

Q. How many people did you employ during this period in the office at Winslow?

A. You are speaking of the Urania period?

Q. Yes. A. Approximately 5.

Q. Stenographers, clerks?

(Testimony of Arthur Lindgren.)

A. I wish you would break it down to administrative or otherwise.

Q. Let's limit it to administrative personnel.

A. And clerical help as well?

Q. Which would be included. [72]

The Court: Ask him a question; is that a fact? Let the record show that what you say is a question.

The Witness: Five.

Q. Who was the warehouse foreman during that period? A. Mr. B. F. Stretch.

Q. What is his background?

A. His background is approximately 25 years with the Standard Oil Company, and employed by the Winslow Marine Railway and the Commercial Ship Repair continuously since 1943 to the present date.

Q. Is he also known as purchasing agent?

A. That is correct.

Q. Was Mr. Finn employed at that time in the yard?

A. For a portion of the period during which the Urania was there, yes.

Q. In what capacity?

A. As yard superintendent.

Q. What is his background, if you know?

A. I do not know too much about it, sir.

Q. What types of vessels do you now have under repair or construction at the Winslow yard?

A. At present we are converting the old fireboat Duwamish for the City of Seattle into a modern

(Testimony of Arthur Lindgren.)

fireboat. We also have the ferry Defiance for the City of Tacoma for underwater repairs, the FS 246 for the U.S. Army, and we were [73] just awarded the contract for the LT 347, I believe is the number, which is due in tomorrow or Monday.

The Court: The term "underwater repairs" may not be specific enough. What does that include?

The Witness: Installation of new tail shafts, changing of wheels.

The Court: By "wheels" do you mean propeller?

The Witness: Yes, sir. The vessel grounded in Tacoma, requiring the replacement of approximately 8 or 10 hull planks, a section of keel, and probably 8 or 10 frames, cleaning and painting.

Q. What are you doing to the Duwamish?

A. The Duwamish is being completely converted from a steamer. She was built in 1909 at Richmond Beach and is an extremely old vessel. We have completely gutted her—by that I mean stripped out all the old machinery, boilers, pumps, foundations, etc.—and are converting her by the installation of three 950 horsepower Diesel engines into the most powerful pumping plant as a fireboat in the world, at least, that is what the City of Seattle claims.

Q. Do you know Mr. Harry F. Williams?

A. I do.

Q. Was he there at Winslow during the period between August 4, approximately, and October 8, 1948, to your knowledge? [74]

(Testimony of Arthur Lindgren.)

A. He was, with the exception of a short period, possibly a week.

Q. What, if you know, was Mr. Williams doing during that period?

A. He was representing the Compania Naviera Limitada in connection with the conversion and repair of the Urania.

Q. Did you have dealings with Mr. Williams?

A. I did.

Q. Showing you Libelants' Exhibit 1, do you know what that is?

A. That is a specification for the repairs to the Motor Tanker Urania.

Q. Do you know whether any work in addition to the items listed on that exhibit was ordered by Mr. Williams during the period that he was at Winslow? A. It was.

Q. Would you describe what practice was followed with respect to additional work?

A. The general practice was to receive a request from Mr. Williams, following which a separate job order would be issued for the performance of the same if authorized by him.

Q. Did you have any direct negotiations with Mr. Williams during this period? [75]

A. I did.

Q. Would you describe what those negotiations were?

A. The negotiations covered a number of matters; for instance, the outlining of a particular

(Testimony of Arthur Lindgren.)

job order, phraseology of the same, the method in which he wanted the work done, and also the cost of the same.

Q. Can you describe specifically to whom he issued orders that the extra work be done?

A. He would issue them to myself, or in my absence, to the general superintendent of the yard.

Q. When such orders were issued, was anything else discussed with Mr. Williams?

A. Price, naturally.

Q. Did you ever discuss price with Mr. Williams on items that he ordered?

A. I did, but not on all items until the final negotiation was made.

Q. On those items that you did discuss with him, describe how the price would be arrived at.

A. The price would be arrived at in various ways. Oftentimes both he and I would go aboard the ship; for instance, he would point out to me he wanted, for instance, a port light put in or a piece of deck added, or this, that and the other, and we would look the thing over and come to a mutual understanding on it. He would describe what he wanted, and [76] in consequence, a job order would be issued to cover it. On those items we did have, prior to the issuance of a job order, a number of them on which we agreed to a price.

Q. Did you ever order any material at Mr. Williams' request? A. Not personally.

(Testimony of Arthur Lindgren.)

Q. Was material, to your knowledge, ordered at his request? A. Yes.

Q. Did Mr. Williams to your knowledge make any direct purchases for the Urania?

A. He did.

Q. To what extent?

A. I cannot say as to the amount of money, but I do know that he bought cylinder blocks, etc., from the Union Diesel Engine Company in Oakland.

Q. Did that necessitate his absence from Winslow? A. It did.

Q. For how long a period?

A. Approximately a week.

Q. Was he there all the rest of the period in question? A. Substantially, yes.

The Court: At this point we will take a ten minute recess. [77]

(Recess.)

(Job Order 678 marked Libelants' Exhibit 4 for Identification.)

Q. Handing you what has been marked for Identification as Libelants' Exhibit 4, will you state what that is?

A. That is a general specification of the additional work performed on the Motor Tanker Urania, over and above that contained in our original contract, consisting of items No. 1 through 48, of Job No. 678.

(Testimony of Arthur Lindgren.)

Q. Who made up that exhibit?

A. That was made up under my direction and in collaboration with others of the supervisors, and taken from the original shop orders issued to the various foremen in the yard covering all additional work on the Urania, and is more or less a consolidation and clarifies to a great extent the individual shop orders.

Q. Do you recognize the signature on the last page of that exhibit? A. I do.

Q. Whose signature is it?

A. H. F. Williams, owners' representative.

Q. Was it signed in your presence?

A. This was signed in my presence.

Q. When? A. October 8, 1948. [78]

Q. Where?

A. At our office in Winslow, Washington.

Mr. Hokanson: I offer that in evidence.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 4 received in evidence.)

LIBELANTS' EXHIBIT No. 4

Commercial Ship Repair
Winslow Division

August 6, 1948

Job Order No. 678
Vessel: M.T. "Urania"
Additional Work

1. Furnish services of qualified Diesel engine machinists to work in engine

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

room as directed by Chief Engineer. Furnish necessary labor and material to make repairs to main engines and pumps as requested and directed by Chief Engineer. Test six (6) exhaust and intake valves hydrostatically for leaks. Face valves and valve seats, grind in and test for tightness. Test six (6) air starting valves, grind in and make tight three (3) air starting valves. Clean up and test eight (8) fuel injection nozzles. Remove cylinder head studs from five (5) cylinders. Install new liners in five (5) cylinders. Disconnect and remove thrust shaft, fly wheel and other interference and lift crank shaft. Reassemble and replace after work is completed by ship's force. Make up necessary spacers for holding main bearing lower shells in place while fitting bearings. Make up two (2) special 1″x16″ studs. Machine main bearing bridge gauge. Make up cylinder liner pulling gear. Make up bracket and lever for fuel nozzle test stand. Make up special equipment for engine throttle controls. Ream holes in new cylinder brackets to accom-

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

modate cam shaft. Install six (6) cylinders on engine. Make up gaskets for fuel pump head. Make up miscellaneous studs, bolts, and small parts for ship's force. Furnish eight (8) mechanics to accompany vessel on sea trial for making adjustments and corrections developing from same. Fasten engine room spare parts on bulkheads in locations as directed by surveyor. Furnish labor and material to pull main engine cylinder liners. Clean and wrap, and store in warehouse. Furnish labor and material and hang chain fall in warehouse to handle main engine pistons. Remove rings from pistons, clean grooves and have ready for new rings. Furnish labor and material to disassemble cam shaft. Stone journals, clean up bearing and gears and reassemble. Make up and install four (4) sets of air compressor valves as per sample furnished. (Total of sixteen (16) valves.) Furnish services of factory representative to supervise operation of diesel engines. Furnish and install fourteen (14) thermometers on main and auxiliary engines as directed by Chief

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

Engineer and Mr. Williams. Furnish and install two (2) rotary hand pumps to replace deteriorated ones presently installed. Furnish labor and material to repair circulating system of main engine as necessary.....$ 6,704.00

2. Referring to Item 47 of original contract, renew or repair the following valves, piping and fittings found broken or defective during test: Hot and cold water piping under floor plates and throughout engine room, main deck quarters and galley (cracked and broken from freezing). Renew hot water tank in engine room. Install steam coils and electric elements in same. Renew all steam heating lines on main deck to tanks, all piping running through pump room and under engine room floor plates to sea chests. Renew piping and fittings for steam heating lines to officers and crews quarters. Repair two radiators on main deck. Renew faucets and drains on three (3) washbowls. Renew piping and fittings on sanitary lines throughout ship. Renew steam reducing valve to heating system. Repair 2½" steam trap to

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

hotwell. Install smothering lines to forward hold. Install piping from after peak tank for suction to fresh water pump. Renew or repair piping, fittings, and valves on fire lines throughout vessel as necessary. Renew pipe lagging on deck steam lines and patch steam lines in quarters. Re-route piping from lube oil tank to poop deck. Install guards over all steam piping full length of main deck. Guards to be made up of steel plate and angles, suitably braced and stiffened. Provide drains on steam lines. Identify all steam smothering lines. Post notice at master stop valve for smothering system. Repair heating coils in cargo tanks as necessary.....$ 7,930.00

3. Furnish necessary labor and material to make repairs to auxiliaries as requested and directed by Chief Engineer. Hydrostatically test cylinder heads and cylinder blocks on three (3) auxiliary engines, also exhaust manifolds. Test and overhaul fuel nozzles for three (3) engines. Test and recondition two (2) fuel pump and governor assemblies. Reseat valves in cylinder heads and grind in

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

valves on two (2) engines. Overhaul two (2) saltwater circulating pumps. Hydrostatically test cylinder heads and blocks on two (2) air compressors. Open out water end of bilge pump and close up after inspection. Install new diaphram on boiler feed pump. Test crank shaft for defects on starboard auxiliary. Make up two sounding rods for tanks. Pull timing gear off cracked crank shaft and install on new crank shaft on starboard auxiliary. Make up fitting for governor control rods. Make up copper gaskets for engines. Furnish equipment to pull cylinder liners and reinstall. Remove broken studs from cylinder block auxiliary engine and air compressor and engine filters. Make up flanges for filters.....$ 1,880.00

4. Furnish thirty-two (32) photostats of vessel as original.....$ 46.00

5. Make up and install plywood flag box at after end of pilot house deckhead.$ 45.00

6. Disconnect, remove to shop and overhaul the following motors as follows:

1—Fresh water pump (Circ. 5-FB-127)

2—Air Comp. #2 (Circ. FB-122)

3—Fire Pump (Circ. FB-123)

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

4—Bilge Pump #2 (Circ. FB-130)
5—Lub. Oil Pump (Circ. FB-125)
Auxiliary Generator #1
Disassemble, wash out, bake dry, recheck, clean up as necessary, reinsulate (varnish), replace faulty or missing parts as necessary and reassemble. Auxiliary Generator #2
(See spare parts list.).....$ 2,205.00

7. Fair up all indents on shell as directed and after completion of repairs hose test. ABS requirement. After Peak Tank: Fair up three (3) deep floors and install suitable stiffening angle on each side of stern tube. ABS requirement. Chip out and weld crack on main deck as marked, ABS requirement. Renew section of damaged plating on wings of flying bridge. Flush off and weld up deck in way of vent pipes on forecastle head.....$ 985.00

8. Furnish labor and material to repair ship's lighting system as follows: Remove grounds from lighting circuit port side and below switchboard in engine room. Replace missing covers throughout ship. Repair open wiring where radio speakers have been removed. Reconnect wiring in locations as necessary .....$ 665.00

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

9. Furnish labor and material to perform the following: Make two (2) new 3/4" galv. quarter shrouds for foremast. Replace three (3) 1 1/4" turnbuckles. Overhaul on cargo hose boom:

   1—3" Sheave block
   1—2" Sheave block
   5—Single sheave blocks

   Replace on cargo hose boom:

   1/2" Wire of topping lift
   1/2" Wire on purchase fall
   5—1 1/8" Galv. anchor shackles

   Make two (2) new shrouds on mainmast .....$ 492.00

10. Furnish and install flushing and sanitary pump complete with motor, rheostats, wiring, switchboard connections, etc. .....$ 547.00

11. Range port and starboard anchor chains for inspection, clean and paint with fish oil and lamp black. Clean out chain locker and spray with fish oil. Remove port and starboard anchor chain to shop and anneal in furnace. After removal from furnace harden up all studs found loose by welding same and free up all shackles. Wire brush and apply one coat black paint. After drying connect to bitter end and re-ship chain.....$ 780.00

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

12. Furnish labor and material to make wooden plugs for each ventilator....$ 35.00

13. Furnish necessary labor and material to extend and relocate whistle at after end of chartroom. Overhaul whistles and prove in good working order....$ 158.00

14. Heating Boiler: Furnish and install new heating coils. Renew all refractories. Make new boiler casing. Rebuild dome to fit new casing, furnish and install new damper and insulate outside of casing. Do necessary pipe work to suit new installation. Press up boiler to 225 lbs. and prove tight to satisfaction of owners representative. Install patent gauge glasses, overhaul safety valves, etc. all to satisfaction of American Bureau.....$ 5,875.00

15. Furnish labor and material to make up and install forty name plates in Greek .....$ 129.00

16. Furnish labor and material to extend transverse bulkhead forward end of after house 36″ to port on main deck, relocate fire station to suit....$ 98.00

17. Remove canvas and frame from after hatch, make up and install steel booby hatch. Furnish labor and material and install watertight door and

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

	weather coaming at after end of booby hatch on poop deck. Remove existing hatch coaming and cover, grind flush and finish old surfaces and corners smooth.....	$ 475.00
18.	Furnish labor and material other than ship furnished to install radio telephone complete. Furnish necessary labor to install owner-furnished radio direction finder.....	$ 960.00
19.	Manufacture and install one (1) additional vegetable locker.....	$ 125.00
20.	Relocate kedge anchor on after main deck and make suitable chocks for same	$ 30.00
21.	Life Boats: Furnish labor and material to perform the following: Provide missing floor board. Provide and install ridge spreaders. Provide and install air tank to suit bow and stern in the two (2) life boats. Provide provision tanks in two (2) boats. Make one (1) rudder as per sample. Provide three (3) 10′ oars. Furnish and install masts and sails for two (2) lifeboats. Mast dimensions to be taken from present mast step. Furnish labor and material to overhaul lifeboat chocks and replace hinges..	$ 1,074.00

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

22.	Relocate navigation lights from top of pilot house to wings of bridge. Make hinged covers, install checker plate helmsmans platform.....$	578.00
23.	Furnish labor and material to repair Captain's safe as necessary.....$	10.00
24.	Alter all vents on poop and forecastle and main deck to meet ABS requirements. Same to be 18" high. Relocate forestay padeye for foremast. Provide plugs with chains attached and screens for all vent pipes. ABS specifications .....$	585.00
25.	Install new duct to pump room exhauster as required by American Bureau. Approximately 1/8" plating....$	685.00
26.	Raise all coamings in door openings to 18" to meet requirements of American Bureau. Hose test and prove tight .....$	185.00
27.	Install linen lockers as directed by Mr. Williams.....$	95.00
28.	Furnish labor and material and test air bottles hydrostatically according to ABS specifications.....$	95.00
29.	Furnish labor and material to install hardwood grating around pilot house controls and wings of bridge as per instructions of Captain.....$	235.00

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

30.	Furnish labor and material to install voice tube from Engineers room to engine room. Furnish labor and material to change voice tubing leading from pilot house to pump room. New lead to go to engine room.....$	95.00
31.	Remove and replace two mooring chocks from location port and starboard side of poop deck, aft to new location at life boat davits.....$	70.00
32.	Furnish labor and material to install pipe awning stanchions on bridge, awning spreaders, etc.....$	345.00
33.	Furnish labor and material to remove and replace lockers and build shelf for line stowage in steering engine room .....$	360.00
34.	Furnish labor and material to manufacture metal cover to be installed on ladder in engine room space to protect gauge glass.....$	15.00
35.	Manufacture and install hinged freeing ports port and starboard sides as required by American Bureau. Install safety bars across openings.....$	75.00
36.	Furnish labor and material to fabricate and install hose stowage racks along starboard side of cat walk....$	660.00
37.	Purchase and install eight (8) swivel	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

	chairs as per instructions of Mr. Williams for officers mess room.....$	175.00
38.	Purchase and install fourteen (14) Foamite extinguishers for vessel. Alter fire extinguisher hangers to accommodate Foam type.....$	275.00
39.	Furnish labor and material to repair and alter fire hose racks throughout ship .....$	105.00
40.	Furnish one (1) steel boarding gangway 28′ long and make suitable stowage for same.....$	525.00
41.	Purchase and install two (2) Inclinometers .....$	25.00
42.	Furnish labor and material to put sound power telephone in satisfactory operation.....$	105.00
43.	Furnish labor and material to fabricate and install engine room floor plates and work bench.....$	145.00
44.	Remove degaussing wires and conduit from deck, chip off all supporting brackets, grind deck smooth and prime paint. Blank off openings in bulkheads fore and aft and prove watertight .....$	525.00
45.	Furnish and install starting motor for auxiliary generator.....$	195.00
46.	Remove spare piston and relocate. Build in store room in starboard for-	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 4—(Continued)

	ward corner of engine room over cargo pump motor. Storeroom deck to be constructed of diamond floor-plate and angle frame supported from deckhead. Sides to be expanded metal with door, hasp, padlock and access ladder to same. Install shelves as directed.....	$ 450.00
47.	Remove two clipboards at after end of engine room starboard side and build in two metal tool lockers with shelves, doors, hasps and locks.....	$ 225.00
48.	Furnish and install two rotary hand pumps to replace deteriorated pumps presently installed. One on fresh water pump, one to fuel oil day tank.	$ 115.00
		$38,191.00

Approved:

M/T "URANIA" AND
OWNERS
COMPANIA NAVIERA
LIMITADA PANAMA

/s/ H. F. WILLIAMS,
Owners' Representative.

Admitted April 7, 1949.

(Testimony of Arthur Lindgren.)

Q. Would you state the circumstances under which that document was made up?

A. This document was made up, as I stated before, in collaboration with the various foremen and supervisors in the yard at the request of Mr. Harry F. Williams in order that he might have a clearer final set of specifications than the job orders themselves indicated, and also for the purpose of negotiating the final prices covering additional work on the vessel.

Q. Did you go over the items thereon listed with Mr. Williams prior to making that up?

A. We did, in great detail.

Q. Did you discuss the prices listed with him?

A. We did.

Q. Did you deliver a copy of that into Mr. Williams' possession? Did he receive a copy of that? A. He did, several.

Q. Did he sign more than one copy, if you know? [79]

A. He signed approximately 6 that we have in our possession.

(Invoice marked Libelants' Exhibit 5 for Identification.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 5, can you state what that is?

A. That is an invoice from the Commercial Ship Repair to the Motor Tanker Urania and

(Testimony of Arthur Lindgren.)

owners, etc., invoice No. 102, Winslow division, dated October 8, 1948, covering Job Order No. 677 (9-1) and Job Order 678 (9-1), the total amount $79,846, plus $2392.68 Washington State sales tax, a grand total of $82,238.68.

Q. Is the exhibit signed on the last page?

A. It is. It is signed, "Approved, M/T Urania and owners, Compania Naviera Limitada, Panama, H. F. Williams, owners' representative," dated October 8, 1948.

Q. Was it signed in your presence?

A. It was.

Q. By whom? A. By Mr. H. F. Williams.

Q. Do you recognize his signature?

A. I do.

Q. Was he furnished a copy or copies of that invoice? A. He was. [80]

Q. Did he sign more than one of those invoices?

A. He signed numerous copies, I would say 6 to 8.

Mr. Hokanson: I offer that in evidence.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 5 received in evidence.)

(Testimony of Arthur Lindgren.)

LIBELANTS' EXHIBIT No. 5

Invoice
Commercial Ship Repair
Pier 66 Bell Street Terminal
Seattle 1, Washington

M/T "Urania" And Owners
Compania Naviera Limitada Panama
c/o General Steamship Co.,
1211 Fourth Avenue
Seattle 1, Washington

Invoice Date October 8, 1948
Invoice No. 10-2 Winslow Div.
Via Job Order 677 (9-1)

Terms: Net Cash

Quantity Item No.	Description	Price	Amount
	To performing the following repairs, alterations and renewals to above named vessel, as outlined in specifications dated August 3, 1948, and our letter of quotation of even date:		
1.	Drydocking Drydock vessel for cleaning, painting and specified repairs. On completion of work undock vessel.		
2.	Underwater Painting Scrape and wash down underwater body of vessel to remove fouling and loose scale. Touch up bare spots below deep load line with bareplate primer. Paint hull from keel to deep load line to light load line, port and starboard, with one coat of boot topping paint. Owner to furnish paint.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Item No.	Quantity	Description	Price	Amount
3.		Hull Marking: Paint in draft marks at bow and stern. Paint name of vessel on bow, port and starboard. Paint name and hailing port of vessel at stern. Paint in Plimsoll marks, port and starboard sides.		
4.		Name Board Manufacture and install suitable name boards on bridge, port and starboard.		
5.		Sea Valves and Strainers Remove strainers from sea chest for examination. Clean and paint sea chests and strainers and replace strainers in good order. Open out all sea valves for examination. Overhaul, grind-in, repack and repaint all sea valves and close up in good order.		
6.		Tailshaft Draw propeller tailshaft for examination. On completion of examination reinstall tailshaft and make up in good order. Repack stern gland with new packing.		
7.		Rudder Rudder to be opened and drained as necessary for complete examination of rudder and stock. On completion of examination close up in good order and repack stuffing box with new packing.		
8.		Zinc Plates Renew zinc plates as necessary.		
9.		Propeller Clean propeller by wire brushing. Fair up and dress off minor indents in tips of blades. Separate work order to be issued to cover any major work found to be necessary.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
10.	Cargo Tanks and Piping System Remove and dispose of approximately 3,000 bbls. of ballast and sludge presently in eight (8) cargo tanks. Clean tanks and piping system and certify "gas free" for hot work and internal examination. Test tank heating coils and report condition found. Open out all cargo valves, both on deck and in tanks, for examination. Overhaul valves, grind in, repack and rejoint and make up in good order. Free up all control reach rods of internal tank valves and repack at deck glands. Open vapor-vacuum valves for examination. Free up as required and close up in good order.		
11.	Cargo Pumps Open cargo pumps and motors and clean up for ABS examination. On completion of examination close up in good order.		
12.	Cargo Tank Ullage Covers Free up and lubricate all dogs and hinges on cargo tank ullage covers. Renew gaskets on cargo tank ullage covers. Prove in good order.		
13.	Fuel Oil Tanks Remove diesel oil from fuel tank located in way of engine room and clean tank. Certify tank "gas free" for internal examination and hot work. On completion of internal examination test tank hydrostatically to requirements of ABS. On completion of testing drain tank free of water and reload diesel oil in tank. Provide suitable storage for diesel oil while tank is being cleaned and tested.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
14.	Forepeak and Aft Peak Tanks. Drain and clean out forepeak and aft peak tanks for internal examination. It is assumed that these tanks are ballast tanks and are not contaminated. On completion of internal cleaning and examination, tanks to be coated with one coat cement wash. On completion of above work tanks to be hydrostatically tested to requirements of ABS. On completion of testing remove testing water and leave tanks dry.		
15.	Fresh Water Tanks Drain and clean out fresh water tanks located port and stbd. in way of engine space. Open tanks for internal examination. On completion of examination tanks to be coated with one coat cement wash. Tanks to be hydrostatically tested to requirements of ABS. On completion of test leave tanks full of fresh water.		
16.	Ballast Tank Conversion Foreward Deep Tank presently fitas a ballast tank to be converted to use as diesel fuel tank as follows: Open tank and clean for internal examination. Connections between tank and forward bilge and ballast pump are to be removed and suitably blanked off. Furnish and install an electric driven fuel oil transfer pump, rotary type, Viking or equal, capacity 10 gpm., as described in section S47 of Conversion Specifications. Pump to be suitably located in storeroom over tank space. Furnish and install fuel oil piping in general accordance with contract plant 837-7. On completion of work close up tank in good order and test		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
	tank and new piping to requirements of ABS. On completion of test remove all test water from tank and leave ready to receive fuel oil.		
17.	Gun Tubs and Ammo Lockers Remove all ammunition lockers and ready service boxes from decks. Remove splintel apron and gun pad from poop deck, plug anchor bolt holes watertight. Remove superfluous sections of forward gun tub leaving section in way of catwalk. Install suitable handrails and curtain plates in way of catwalk forward where sections of gun tub removed. Chip off all rough edges and grind smooth.		
18.	Ladders and Handrails Fair and refit all deck ladders and handrails where damaged and install new handrails where missing. Refit and rig bulwark stanchions at port and stbd. sides of main deck and fit out with new wire and turnbuckles. Any missing stanchions to be furnished by owner.		
19.	Port Lifeboat Fair out indents in hull of Port Lifeboat and restore to original good order.		
20.	Watertight Doors and Scuttles Free up all dogs and locking gear, including hinges, of all watertight doors and scuttles leading from weather decks to forecastle and afterhouse. Thoroughly lubricate and prove in good order.		
21.	Mushroom Ventilators Free up, lubricate and prove in good order all mushroom ventilators on weather decks.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Item No.	Quantity	Description	Price	Amount
22.		Ventilation System Check out all ducts and blowers in ventilation system throughout the vessel and report condition found.		
23.		Electrical System Megger test all electrical circuits, motors and generators throughout vessel to requirements of ABS and report conditions found. Reassemble and properly close up all open junction boxes, switch boxes and outlets. Renew fuses on all switchboards where standard fuses fitted. Report all deficiencies found in electrical system. Check markings on all electrical switch boxes and re-label correctly as found necessary. Separate order will be issued for all equipment renewals found to be necessary to restore good order and operating conditions.		
24.		Fire Fighting Equipment Check, test, and/or weigh all fire extinguishers and CO_2 bottles and report condition found. Ships crew will recharge all liquid extinguishers. Separate order will be issued for recharging CO_2 bottles as necessary.		
25.		Engine Controls and Telegraph Test out Pilot House controls to main engine and engine order telegraph and report condition found. Free up and lubricate mechanical equipment found in good order.		
26.		Steering Engine and Controls Test out steering engine and steering gear and report condition found. Free up and lubricate mechanical equipment found in good order. Remove locking device from rudder before testing.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Item No.	Quantity	Description	Price	Amount
27.		Gauges and Indicators Check out all gauges and indicators throughout vessel and report condition found. Gauges and indicators where dismounted to be reinstalled and connected in good order.		
28.		Flag Pole Damaged flagpole at poop to be faired and refitted as originally installed. Check and repair electric connections and fittings to restore to good order.		
29.		Whistles Check out and test whistles and report condition found. Make minor adjustments and connections found necessary.		
30.		Mooring Winch Furnish and install suitable electric driven mooring winch for handling of stern lines. Motor drive to operate at 120 V.D.C. and to be approximately 3 to 5 H.P. Controls to be located in convenient location as directed and to be weatherproof.		
31.		Wheelhouse Doors Furnish and install two (2) new metal doors at wheelhouse, port and starboard sides. Frame to be fitted to accommodate new doors. Doors to be fitted with all new hardware including holdback and ajar hooks.		
32.		Navigation and Flood Lights Check out and refit as necessary, all navigation lights, search light and deck flood lights and prove in good order.		
33.		Mast Rigging Mast rigging and fittings shall be examined and existing equipment repaired to restore to original good order, any renewals to be furnished by owner.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
34.	Screen Doors Renew damaged or missing screen in screen doors throughout vessel. Renewals to be bronze or copper screening.		
35.	Sprinkling System Sprinkling system to forward ammunition locker to be removed in its entirety.		
36.	Ammo. Storeroom Bulkhead Remove designated section of bulkhead at forward ammunition storeroom.		
37.	Plumbing and Heating Systems Check out all plumbing and heating fixtures presently on the vessel and repair as found necessary to restore to good order. Vessel to supply any missing or damaged fixtures. Connect all piping, close all drains, test out and free up flushometers.		
38.	Crews Quarters—Port Side, Main Deck Furnish and install crews quarters to accommodate eleven (11) men in four (4) rooms on Port side, Main Deck as per arrangement plan #837-1 and in accordance with details specified in conversion specifications.		
39.	Crews Quarters—Starboard Side, Main Deck Furnish and install crews quarters to accommodate two (2) men in one (1) room on starboard side, main deck aft together with sanitary facilities adjacent thereto as per arrangement Plan #837-1 and in accordance with details specified in conversion specifications.		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Item No.	Quantity	Description	Price	Amount
40.		Messroom Furnish and install joiner bulkheads in way of officers messroom to suitable divided space and segregate from adjacent crew messroom as directed.		
41.		Officers Quarters—Boat Deck Furnish and install new section of deck house at port and starboard sides of existing Captains Quarters on Boat Deck as per Arrangement Plan #837-1 and in accordance with details specified in Conversion Specifications. Soil lines and piping to Officers Toilet and Shower Room in way of Refrigerator space to be rearranged to accommodate refrigerator space arrangement.		
42.		Captain's Stateroom Captain's Stateroom to be thoroughly cleaned out and furniture and fixtures rearranged and refitted to restore to original good order.		
43.		Refrigeration Space and Equipment Furnish and install Refrigeration Boxes and equipment essentially as per Arrangement Plan #837-1 and in accordance with details specified in conversion specifications. Hotel type domestic refrigerator presently located in this space to be removed, overhauled and restored to good order and re-installed with all fittings and controls in ship's Galley as directed. Space as detailed in Arrangement Plan to be enlarged by extending starboard bulkhead approximately three (3) feet to starboard side to allow use of center section in way of entrance door for passage of fire main and electrical wiring as presently installed. Center section will not be insulated, but will be used for access		

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

to Meat Box on Port Side and to Vegetable Room on starboard side. Controls for individual boxes to be located conveniently in Engine Space.

44. Galley
Remove domestic refrigerator and bread box and install hotel type domestic refrigerator to be removed from Refrigerator Space. Clean up service tables by wire-brushing to bare metal. Check out Galley electric range and report condition found. Repair cowling over galley range to restore to original good order. Overhaul galley range to restore to original good order. Overhaul galley range exhaust blower as necessary to restore to original good order.

45. Clayton Boilers—(2)
Clean out two (2) Clayton Boilers located in Engine Space. Thoroughly check out, examine and test all parts and controls and report condition found.

46. Anchor Windlass
Check out anchor windlass, drive motor and controls and report condition found. Assemble parts in good order and test windlass to ABS requirements. Thoroughly lubricate.

47. Steam and Water Lines
Connect up and test out all existing fresh water, steam, sanitary and fire lines throughout vessel and report condition found.
Renewals found to be necessary to be covered by separate work order.

48. Panama Bitts
Furnish and install two (2) ten inch (10″) Panama Bitts. Bitts to be located on Fo'csle Head, port and starboard, as directed.

49. Skylight Operating Gear
Free up and lubricate operating gear of engine room skylight and prove in good order.

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
50.	Chart Room Furnish and install Chart Room to be located aft of Captain's Quarters on Boar Deck approximately 8 feet x 8 feet x 7 feet. (Revised item to be issued giving details.)		
51.	Item Deleted.		
52.	Chain Pipe Covers Furnish and install chain pipe covers as required. Free up and refit existing dogs and covers on chain pipes and hawse pipes, port and starboard.		
53.	Pipe Lagging Check out entire vessel for defective pipe lagging and report condition found. All defective lagging to be renewed or repaired to restore to good order.		
54.	Dry Storeroom Shelving Metal shelving and bins to be furnished and installed as directed in space below main deck, aft of engine room.		
55.	Vegetable Locker Furnish and install suitable vegetable locker, with lock, on poop deck as directed. Locker to be constructed of expanded metal sreen.		
56.	Door Locks Renew or repair defective joiner door locks throughout vessel. Furnish keys with new locks.		
57.	Pelorus Stands Remove two (2) Pelorus stands located at port and starboard sides of bridge. Flush off cuts and grind smooth.		
			$41,655.00

To performing the following additional repairs:

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
1.	Main Engines—Per Specifications	$6,704.00	
2.	Renewing Piping, etc.—Per Specifications	7,930.00	
3.	Repairs to Auxiliaries	1,880.00	
4.	Furnish thirty-two (32) photostats of vessel as original	46.00	
5.	Make up and install plywood flag box at after end of pilot house deckhead	45.00	
6.	Electric Motors—Per Specifications Attached	2,205.00	
7.	Indents on Shell—Per Specifications Attached	985.00	
8.	Ship's Lighting System—Per Specifications Attached	665.00	
9.	Rigging—Per Specifications Attached	492.00	
10.	Flushing and Sanitary Pump—Per Specifications Attached	547.00	
11.	Anchor Chains — Per Specifications Attached	780.00	
12.	Ventilator Plugs—Per Specifications Attached	35.00	
13.	Ship's Whistles—Per Specifications Attached	158.00	
14.	Heating Boiler—Per Specifications Attached	5,875.00	
15.	Name Plates—Per Specifications Attached	129.00	
16.	Bulkhead, per Specifications Attached	98.00	
17.	Booby Hatch, per Specifications Attached	475.00	
18.	Radio Telephone & Direction Finder, per Specifications Attached	960.00	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
19.	Vegetable Locker, per Specifications	125.00	
20.	Keg Anchor, per Specifications Attached	30.00	
21.	Life Boats, per Specifications Attached	1,074.00	
22.	Navigation Lights, per Specifications Attached	578.00	
23.	Captain's Safe, per Specifications Attached	10.00	
24.	Pipe Vents, per Specifications Attached	585.00	
25.	Ventilation Duct, per Specifications Attached	685.00	
26.	Door Coamings, per Specifications Attached	185.00	
27.	Linen Lockers, per Specifications Attached	95.00	
28.	Air Bottles, per Specifications Attached	95.00	
29.	Pilot House Gratings, per Specifications Attached	235.00	
30.	Voice Tubing, per Specifications Attached	95.00	
31.	Mooring Chocks, per Specs. Attached	70.00	
32.	Awning Stanchions, per Specifications Attached	345.00	
33.	Line Stowage, per Specifications Attached	360.00	
34.	Gauge Glass Cover, per Specs. Attached	15.00	
35.	Freeing Ports, per Specs. Attached	75.00	
36.	Hose Stowage Racks, per Specifications Attached	660.00	
37.	Purchase and install eight (8) swivel chairs as per instructions of Mr. Williams for officers mess room....	175.00	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 5—(Continued)

Quantity Item No.	Description	Price	Amount
38.	Foamite Fire Extinguishers, per Specs. Attached	275.00	
39.	Fire Hose Racks, per Specs. Attached	105.00	
40.	Boarding Gangway, per Specs. Attached	525.00	
41.	Inclinometers, per Specs. Attached	25.00	
42.	Sound Power Telephone, per Specs. Attached	105.00	
43.	Furnish labor and material to fabricate and install engine room floor plates and work bench	145.00	
44.	Degaussing, per Specs. Attached	525.00	
45.	Auxiliary Generator. Furnish and install starting motor for auxiliary generator	195.00	
46.	Store Room, per Specs. Attached	450.00	
47.	Tool Lockers, per Specs. Attached	225.00	
48.	Auxiliary Hand Pumps, per Specs. Attached	115.00	$38,191.00
			$79,846.00
	3% State Sales Tax on Items 2 thru 57—Original Contract and Items 1 thru 47 on Additional Work		2,392.68
			$82,238.68

Date: Oct. 8, 1948.

Approved: M/T "Urania and Owners Compania Naviera Limitada Panama.

/s/ H. F. WILLIAMS,

Owner's Representative.

(Invoice marked Libelants' Exhibit 6 for Identification.)

(Testimony of Arthur Lindgren.)

Q. Handing you what has been marked for identification Libelants' Exhibit 6, can you state what that is?

A. That is an invoice from the Commercial Ship Repair to the Motor Tanker Urania and owners, invoice No. 10-1, Winslow division, covering spare parts, etc. and auxiliary machinery, totaling $6920.46, plus 3 per cent Washington State sales tax in the amount of $207.61, a grand total of $7128.07.

Q. Is the document signed? A. It is.

Q. By whom, if you know?

A. It is signed, "Dated October 8, 1948, approved Motor Tanker Urania and owners, Compania Naviera Limitada, Panama, H. F. Williams, owners' representative."

Q. Do you recognize that signature?

A. I do.

Q. Was it signed in your presence? [81]

A. It was.

Q. Where?

A. In our office at Winslow, Washington.

Q. Was Mr. Williams furnished a copy or copies of that document?

A. Yes, he was, several.

Q. Did he sign one or more of the copies?

A. He signed approximately 5 or 6.

Mr. Hokanson: I offer the exhibit.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 6 received in evidence.)

(Testimony of Arthur Lindgren.)

LIBELANTS' EXHIBIT No. 6

Invoice
Commercial Ship Repair
Pier 66 Bell Street Terminal
Seattle 1, Washington

M/T "URANIA" and Owners
Compania Naviera Limitada Panama
c/o General Steamship Co.,
1211 Fourth Avenue
Seattle 1, Washington

Invoice Date October 8, 1948
Invoice No. 10-1 Winslow Division
Via Job Order No. 678 (9-1)

Terms: Net Cash

Quantity	Description	Price	Amount
	To furnishing the following spare parts for auxiliary machinery:		
2	New Departure Bearings #87506	4.30	
27	Generator Brushes (made up) 1.35 ea.	36.45	
1	New Departure Bearing #7314	14.47	
	Rewind and overhaul Armature for Main Dynamo	585.00	
1	Bearing Std. NH42170	8.82	
1	Bearing Std. NH4271	8.82	
3	Bearing Std. H40425 7.83 ea.	23.49	
2	Bearing Std. H40426 7.83 ea.	15.66	
3	Bearing Std. H40427 9.13 ea.	27.39	
3	Bearing Std. H40428 9.13 ea.	27.39	
1	Bearing Std. H40496	7.83	
4	Thrust Rings NH42169 2.60 ea.	10.40	
12	Bearings Std. H5943 6.00 ea.	72.00	
1	Crankshaft (B39546)	563.60	
50	Packings H9259 .28 ea.	14.00	
30	Plugs 1" S715 .07 ea.	2.10	
30	1½" Plugs .19 ea.	5.70	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 6—(Continued)

Quantity	Description	Price	Amount
24	040 Rings H65325 ..... .94 ea.	22.56	
24	040 Rings H65326 ..... .94 ea.	22.56	
48	040 H65327 Rings ..... .94 ea.	45.12	
24	040 Rings H6354 ..... .94 ea.	22.56	
36	H5943 Con Rod Shells Std ..... 6.00 ea.	216.00	
1	#185 Tip Cleaning Kit for Cummins Engine Model HI	1.85	
3	#71 Kits ..... 7.96 ea.	23.88	
3	#73 Kits ..... 8.80 ea.	26.40	
1	TQ-250 Torque Wrench	28.00	
1	TQ-602A Torque Wrench	84.00	
1	4011 Puller	18.40	
1	ST-68 Tool	4.56	
4	#73 Complete Kits—Gaskets .. 8.80 ea.	32.50	
2	H40423 Main Bearing Sets ..... 21.01 ea.	42.02	
2	H40424 Main Bearing Sets ..... 21.01 ea.	42.02	
6	H40425 Main Bearing Sets ..... 7.83 ea.	46.98	
4	H40426 Main Bearing Sets ..... 7.83 ea.	31.32	
6	H40427 Main Bearing Sets ..... 9.13 ea.	54.78	
6	H40428 Main Bearing Sets ..... 9.13 ea.	54.78	
2	H40496 Main Bearing Sets ..... 7.83 ea.	15.66	
18	H-9167-Y Valves ..... 2.98 ea.	53.64	
18	H-9176-X-1 Valves ..... 2.77 ea.	49.86	
2	DM-14623 Ring Sets ..... 28.05 ea.	56.10	
12	H-9216 Springs ..... .55 ea.	6.60	
6	H-4795-7 Liners ..... 16.43 ea.	98.58	
18	H-9259 Packings ..... .28 ea.	5.04	
	28½ Inches 2" Radiator Hose .. 1.28 ft.	3.00	
8	S-2350 Clamps ..... .24 ea.	1.92	
1	H-41032 Section	6.11	
30	S-715-1" Plugs ..... .07 ea.	2.10	
30	S-701 1⅛" Plugs ..... .10 ea.	3.00	
12	H-5943 Con Rod Shells ..... 6.00 ea.	72.00	
30	S-706 1½" Plugs ..... .19 ea.	5.70	
1	H40418 Pulley	29.70	
3	S-1792 Belts ..... 1.78 ea.	5.34	
6	X2236 Belts ..... 4.14 ea.	24.84	
24	H-T1263 Rings—Std ..... .58 ea.	13.92	
1	Cylinder Block	533.60	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 6—(Continued)

Quantity	Description	Price	Amount
1	Set ½" Gage Glass Cocks	2.50	
2	New Departure Bearings 87504	3.20	
2	Carbon Brushes (Made Up)	1.50 ea. 3.00	
1	1-1/10# #1 HMP Grease	1.93	
2	Ideal Brush Seaters #23008	1.00	
5	H10288-15 Shafts	19.80 ea. 99.00	
5	H10288-39 Shafts	16.50 ea. 82.50	
5	H10288-41 Spacer	10.73 ea. 53.65	
5	H10288-44 Gear	26.40 132.00	
5	H10288 34 Gear	26.40 132.00	
10	H10288-27 Housing	5.78 57.80	
10	H10288-18 Spring	.77 7.70	
10	H10288-22 Rings	.72 7.20	
10	H10288-29 Guides	.61 6.10	
10	H10288-26 Flax Seal	3.03 30.30	
10	H10288-30 Carbon	1.32 13.20	
10	H10288-23 Snap Ring	.26 2.60	
30	H10288-36 Keys	.55 16.50	
10	H10288-40 Gaskets	.22 2.20	
5	H10288-25 Gaskets	.22 1.10	
10	H10288-13 Retainers	2.09 20.90	
10	H-10288-19 Rings	.77 7.70	
3	S-1710 BR 6	1.35 4.05	
3	S-16002 BR 6	1.52 4.56	
6	H-10288-14 Bushings	9.24 55.44	
6	H-10288-35 Bushings	2.15 12.90	
20	H-10288-17 Slinger	.50 10.00	
20	S-720 Plugs	.53 10.60	
1	H-41037 Sections	7.26 7.26	
3	S-1800 Seals	1.16 ea. 3.48	
3	S-10109 Seals	1.66 ea. 4.98	
50	H-62727 Lock Plates	.02 ea. 1.00	
50	H-9427 Lock Plates	.05 ea. 2.50	
20	S-2470-C Gaskets	.50 ea. 10.00	
20	103755 Gaskets	.52 ea. 10.40	
20	3068B Gaskets	.24 ea. 4.80	
2	HQ-504 Regulator	22.70	
1	110V 50 Amp. Harman D.C. Rev. Current Relay	8.60	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 6—(Continued)

Quantity	Description	Price	Amount
3	9S-4223-L Type FIX Switch	14.25	
1	ST-68 Tool	4.56	
4	Complete sets carbon and rubber seals for Sherwood circ. Water Pump $4494	22.92	
	Factory overhaul fuel pump No. 06H32586	385.80	
3	H66739 Gauges	5.64	
3	H66733 Gauges	5.61	
3	H66735 Gauges	5.64	
3	H66737 Gauges	5.64	
2	S-1814 Switch	6.18	
1	H-66741 Ammeter	1.88	
	Style 926F Fulton Sylphon control valve, #1-15869 range 130/160F	41.60	
2	BM-14690 Tubes	10.78	
4	S1076 Nuts	2.20	
20	S1077 Grommets	5.80	
	2" Cummins sea water pressure 0/30	6.13	
2	H10288-3 Housings	99.00	
2	H10288-3 Gears	52.80	
2	H10288-34 Gears	52.80	
2	H10288-15 Gears	39.60	
2	H10288-39 Shafts	33.00	
2	H10288-41 Spacers	21.46	
4	S2643 Thermostats	26.40	
	Services of factory representative (Cummins) to supervise operation of Diesel engine	31.76	
20	Non 20 Buss	1.32	
20	Non 30 Buss	1.32	
18	Only #F825-0 Winslow Fuel Elements	18.90	
	Charge for technical services	5.00	
	Transportation	1.75	
1	#2501-7 Ward Leonard Battery charging rheostat	44.50	
2	H-41272 Pulley	29.48	
1	S3005 Tachometer	30.78	
1	93899 Angle Elbow	7.50	
20	S-3062 B Gaskets	4.80	
1	S-3005 Tachometer	30.78	

(Testimony of Arthur Lindgren.)

Libelants' Exhibit No. 6—(Continued)

Quantity	Description	Price	Amount
4	S2668 Joints	2.64	
4	S3062A Cartridges	5.80	
2	92899 RA Elbows	15.00	
3	42" Tachometer Cables	11.25	
1	Lub. Oil Temp Gauge—Tubing 26" long	11.55	
1	S-2313—93899 S.W. Tac. Head	11.72	
	Labor and material to factory overhaul and place in good operating condition one (1) only fuel pump and governor assembly for 6 cyl. Cummins Model H.F. Serial 32829	46.74	
1	Complete set—Spare Boiler Coils	900.00	
	Factory overhaul of tachometer to place same in good operating condition	33.75	
	Air express and freight on above listed parts	44.93	
	Long Distance Telephone calls to New York City	58.60	
			$6,291.33
	Plus 10% Handling Charge		629.13
			$6,920.46
	3% Sales Tax		207.61
			$7,128.07

Date: Oct. 8, 1948.

Approved: M/T "Urania" and Owners, Compania Naviera Limitada Panama.

/s/ H. F. WILLIAMS,
Owner's Representative.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. Do you have a personal knowledge of the experience of the dockmaster, Mr. Earl Callahan?

A. I do.

(Testimony of Arthur Lindgren.)

Q. Would you say he was a competent dockmaster? A. I certainly would.

Q. Were you present when the Urania was drydocked?

A. Either at the time or very shortly afterwards, within two hours, I would say. [82]

Q. Were you present when the Urania was returned to the water?

A. I don't believe so; I cannot recall.

Q. Are you familiar with the bleeder plug that was drilled in the bottom of the vessel, in the hull of the vessel? A. I am.

Q. Are you aware of the fact that that was left open when the vessel was returned to the water?

A. I was.

Q. Isn't it a fact that that necessitated redocking the vessel? A. It did.

Q. How long did that require to redock the vessel?

A. I would have to review our log books in order to tell you that, but I would say offhand a period of approximately two hours.

Q. When was that done?

A. Several days following the original launching of the vessel.

Q. That is your best recollection of the time?

A. That is my best recollection.

Q. Would that take care of the period required to place the vessel on the drydock and pump the dock out and then return the ship to the water?

(Testimony of Arthur Lindgren.)

A. Understand, this is not a dock that pumps out, [83] it is a marine railway on inclined tracks. The time consumed in hauling a vessel out and returning to the water is much less than it would be in an ordinary drydock where it is pumped out. Two hours would be sufficient, yes.

Mr. Hokanson: This testimony I move be stricken from the record on the ground it is not pertinent cross-examination at this time. There is nothing in the pleadings here with reference to the drydocking of this vessel which would allow an issue to be made up at this time concerning what is being testified to.

The Court: Does it or does it not relate to the competency of persons employed by the libelants?

Mr. Howard: It does, if the Court please, and also the allegations in our cross libel.

The Court: As to what?

Mr. Howard: As to delay of the vessel at the libelants' yard.

The Court: You may respond, if you wish.

Mr. Hokanson: If we are to take this matter out of order at this time, I would like to know. I had assumed from the outset we were going to proceed with the libel and the answer thereto, rather than to interject issues that may be framed by the cross libel and the answer thereto.

The Court: The whole case is being tried, and the [84] Court prefers to proceed in this way as to this.

(Testimony of Arthur Lindgren.)

Mr. Hokanson: Very well, your Honor.

Q. Relating my last question now to the operation of a marine railway rather than a drydock being pumped out, what would be the total over-all time required to haul out the vessel and then to return the vessel to the water?

A. The total over-all time required under ordinary circumstances to haul a vessel from starting time until the floor of the dock came out of the water, would be approximately 45 minutes.

Q. Then to return the vessel to the water?

A. Somewhat less, possibly 20 minutes.

Q. Do you know how long it took to haul the vessel in this particular case? A. I do not.

Q. You have stated on direct examination that this additional work was requested by Mr. Williams and separate job orders were issued, is that correct? A. That is correct.

Q. Did you receive any written request from Mr. Williams for that work?

A. At times, portions of it.

Q. Have you brought with you any requests that were received from Mr. Williams for additional work? A. I have none. [85]

Q. I take it that on some occasions there was nothing in writing? A. Correct.

Q. You mentioned that price was discussed when the additional work was requested by Mr. Williams? Will you amplify that as to what the extent of your discussion was as to the price of the work?

(Testimony of Arthur Lindgren.)

A. You would have to elaborate on that a little bit to give a direct answer, or make it more specific, I should say.

Q. In Libelants' Exhibit 4 which you have before you there, item 1 on page 1 shows a total of $6704, is that correct? A. Yes, sir.

Q. Was that figure discussed with Mr. Williams before the work was performed?

A. No. That was a figure that would have been impossible of discussion before the work was performed.

Q. Refer now please to——

A. Because of the impossibility of ascertaining everything required to be done on the main engines prior to their being opened up and examined. Furthermore, this work was entirely under the jurisdiction and being performed by the ship's crew, and we had no direct means of ascertaining what would be required. Therefore, the price could not [86] be discussed until the entire item 1 was finished.

Q. Refer, please, to item 2. Was that price discussed with Mr. Williams before?

A. The same applies there.

Q. How about item 3? A. The same.

Q. How about item 4?

A. That speaks for itself.

Q. Was it discussed with Mr. Williams?

A. Yes.

Q. That amount was indicated to him?

(Testimony of Arthur Lindgren.)

A. That is right.

Q. Refer to item 6, please. Was the price for that work discussed with Mr. Williams before the work was undertaken? A. No.

Q. Refer, please, to item 9. Was the price for the work involved in item 9 of Exhibit 4 discussed with Mr. Williams before the work was undertaken?

A. I take it I am not allowed to interject——

The Court: No. The answer is to be made in response to questions.

Mr. Hokanson: Answer the question, if you can.

A. Item 9, no.

Q. Refer, please, to item 14 on page 4 of this exhibit. [87] Was the price for that work discussed with Mr. Williams before the work was undertaken? A. Yes.

Q. And what is your recollection as to the discussion that you had with Mr. Williams as to item 14 and the price of that work?

Mr. Hokanson: At what time, counsel?

Mr. Howard: Before the work was undertaken.

A. The principal discussions covering item 14, as I recall it, were held between Mr. Williams and Mr. Featherstone; and when you say discussions as to price, it was a matter of a mutual conference as respects the costs of the installation of an entirely new boiler, repair of the present boiler, if possible, or the rebuilding of the present boiler, and everything in connection with it. It was indicated that something in the nature of that cost would be

(Testimony of Arthur Lindgren.)

required to place that boiler in that condition. When I say Mr. Featherstone and Mr. Williams, I myself was a party to those discussions.

Q. Isn't it a fact that the prices shown on Exhibit 4 were determined after the work was completed? A. The majority of them, yes.

Q. So that in the majority of the cases, you did not discuss the price with Mr. Williams before the work was undertaken? [88]

A. I would say in the majority of them there was no firm price given, but there certainly were discussions as to the approximate cost.

Q. Referring back, if you please, to item 1 of Exhibit 4, will you state how you determined the figure of $6704 which is shown as the total for that item?

A. We kept running costs of the work as it went along.

Mr. White: Your Honor, at this point I am going to object to that on the ground that we have admitted in evidence documents signed by Mr. Williams, the owners' representative. The witness has testified that they were all signed by Mr. Williams, bearing his signature, approved, that the prices were negotiated with him, that he had full authority to represent the company; and any question concerning how these items were arrived at in price at this time is immaterial on the theory that we have here an account stated, a negotiated contract price. Inquiry into the background of it is not necessary under the libelants' theory of the case,

(Testimony of Arthur Lindgren.)

and if there is to be any further questioning along this line, I respectfully request the Court to hear argument upon that issue at this time.

The Court: What theory have you? Do you deny that it is an account stated? [89]

Mr. Howard: Yes, your Honor, we do for the reason that we do not believe that the approval as shown on the invoices is necessarily an approval as to the prices, and we do not believe that the fact of the extent of the authority of Mr. Williams has yet been established, so that we feel it is appropriate at this time to examine these witnesses as to the manner in which these charges were arrived at; and furthermore, by this and other witnesses we will undertake to prove there were limitations on the authority of this agent, and that those were known to the parties we were dealing with.

The Court: I will hear you further on the subject, Mr. Hokanson.

Mr. Hokanson: With your Honor's permission, Mr. White will argue the matter.

Mr. White: I think in order to shorten this, we might make our position very clear. It is our position that we have introduced these signed invoices; they become, in effect, contracts. We have no objection to the cross-examination of any witness as to the qualifications of the personnel or whether the work was properly performed, but they cannot inquire, in our view of the case, into the reasonableness of the price or into any such matter as

(Testimony of Arthur Lindgren.)

that, inasmuch as we [90] have here an account stated, and there is nothing in the pleadings whereby they seek to impeach the account stated. An impeachment of an account stated is what must be pleaded as an affirmative defense.

I direct the Court's attention to the fact that a state law applies with respect to determination of what constitutes an account stated, with a Ninth Circuit case, and the universal general rules with respect to an account stated.

In the restatement of contracts, section 422, it is said that where you have a document which, even if it is submitted to the other side and there is no approval, if it is held on to long enough, it becomes an account stated.

Here we have a much stronger situation. We have a situation where the owners' representative has signed and approved the invoices. We therefore, in effect, have a contract. We have put on the contract and they cannot go behind the reasonableness of the price. That is our whole contention, your Honor, and with respect to the authority of an agent to state an account, I have authorities on that. It is our contention that there is no question but that Mr. Williams had authority to state the account.

The Court: If you ask this witness this question [91] now, he will not properly be permitted to ask this witness the same question at any other time in the trial. In view of all that has been said

(Testimony of Arthur Lindgren.)

by counsel on both sides, the objection is overruled.

Mr. Howard: Will the reporter read the last question and answer, please?

(Last question and answer read by the reporter as follows:

"Q. Referring back, if you please, to item 1 of Exhibit 4, will you state how you determined the figure of $6704 which is shown as the total for that item?

A. We kept running costs of the work as it went along.")

Q. Were you through with your answer?

A. Yes.

Q. Have you brought with you today the records of these running costs you are referring to?

A. I believe we have.

Mr. White: May the record show my objection goes to all this line of questioning?

The Court: Yes.

The Witness: I am not prepared personally. Our accounting department handles the matter of costs.

Q. Do you know whether any statement has [92] been prepared showing such items as the number of hours of labor and the items of material that go into the figure of $6704 for this item 1?

A. Yes.

Q. Do you have that with you?

A. No, I haven't.

(Testimony of Arthur Lindgren.)

Q. Can you state who has that record?

A. The record such as that is in the possession of our counsel, I believe.

Mr. Howard: Counsel, will that record be available if I move for production of it at a later time?

Mr. Hokanson: For the record, in view of the Court's ruling, it may be necessary for me to bring the record, and if the Court decides that it is necessary to go into the matter of the reasonableness of these items, we will bring the necessary supporting evidence to show the breakdown of labor and material.

Mr. Howard: At that time the record that he has referred to, the reconciliation, will be made available?

Mr. Hokanson: That is correct.

The Court: I still think counsel are proceeding too slowly in the business of questioning witnesses. I think you should proceed more expeditiously to propound questions.

Mr. Howard: I will undertake to comply with your order.

Q. As to the parts for the Union Diesel engine you referred to in your direct examination, do you know of your own personal knowledge whether Mr. Williams ordered and purchased those?

Mr. Hokanson: That is objected to as having been covered in direct examination.

The Court: Overruled.

A. I do not.

(Testimony of Arthur Lindgren.)

Q. You stated on direct examination that at the time these invoices were signed, you conferred with Mr. Williams for the purpose of negotiating final prices on the work, is that correct?

A. Yes, prior to the signing of the invoices, we negotiated final prices, yes.

Q. Is it not a fact that at that time Mr. Williams advised you that he could not approve the amounts and that they would have to be referred to the owners at New York for adjustment?

A. He definitely did not.

Q. Do you recall any discussion indicating that Mr. Williams intended to refer this to the owners at New York [94] for adjustment and determination of the price?

A. No, sir. He would naturally refer to his owners in New York, it being their promise to pay it. However, I was under no—not at any time was I under any apprehension but what Mr. Williams' final approval of the specifications and the invoices themselves would close the matter so far as we were concerned.

Q. Will you state who was with you at the time that you referred to, when Mr. Williams signed the invoices and specifications?

A. Our chief accountant, Mr. F. J. Harper. Mr. Featherstone, I believe was present.

Q. Anyone else?

A. Several stenographers. Do you want their names?

(Testimony of Arthur Lindgren.)

Q. No. If they are stenographers, I am not interested in their names. Isn't it a fact that at that time Mr. Williams indicated to you that he was signing these invoices under protest, because he considered that some of the charges were excessive?

A. No, I do not think so, because I had previously drawn up several specifications for his perusal, for his comments and his possible reduction, etc. We went over these various items, rewrote the thing twice, came to a mutual agreement on the price of each and every individual item. He signed the specifications and he signed the [95] invoices and I assumed that he was happy about it.

Q. Do you recall any discussion with him where he indicated any dissatisfaction with the amounts charged?

A. I do not. He was somewhat surprised at the total amount, but the individual items were quite satisfactory to him.

Q. Referring, please, to Libelants' Exhibit 6, can you state how the amounts or the prices as shown opposite each item on that invoice are determined?

A. Those are copied directly from the invoices submitted to the Commercial Ship Repair by the Cummins Diesel Engine Company, and represent the true cost plus the handling charge at the end of 10 per cent. When I say Cummins, with the exception of one or two items which cover other parts obtained from other vendors or furnished directly by Commercial Ship Repair.

(Testimony of Arthur Lindgren.)

Mr. Hokanson: May it please your Honor, for the record and so that my silence may not be construed as a waiver, I again repeat the objection earlier made, that this line of questioning constitutes impeachment of a written instrument and signature, which under the rules of parol evidence cannot be collaterally attacked, and my objection continues as to all questions which go behind the contract price.

The Court: I think I may appropriately [96] explain the overruling of that objection, which is also repeated at this time, and that is that suppose you were wrong about this being an issue properly tendered in the pleadings, not your libel but in the cross libel or the answer, and suppose the Court agreed with you upon that and then the Court disposes of this on that theory and acts as you wish the Court to act.

You then have the case decided without receiving and considering evidence upon that issue. If you and the Court were wrong in the position on it, then you would have a case tried—I believe the estimate is a considerable length of trial—and you would have to do it all over again.

Isn't it much better to hear the evidence and after all the evidence is in, for the Court to determine then which evidence is the more weighty, or whether or not the evidence is properly received; and if so, if the Court should decide it isn't, the Court can exclude it and disregard it.

(Testimony of Arthur Lindgren.)

That is the theory upon which the Court's mind works upon this objection. I am not yet absolutely certain as to what all the issues may be that are tendered in the cross libel which are not available to the respondents under a general denial, but I think the better course is to receive the evidence. That [97] is the reason I am doing it, so the objection is overruled.

Mr. Hokanson: Then may the record show that I need not continue my objection and that it goes to all of this?

The Court: Is that agreeable to counsel for the respondent?

Mr. Howard: That is agreeable, your Honor.

The Court: It is approved by the Court.

Q. Referring again to Exhibit 6, do you have with you the manufacturers' invoices for the various items shown?

A. It is in the possession of our counsel, yes.

Mr. Howard: I have no further questions.

Redirect Examination

By Mr. Hokanson:

Q. As a matter of clarification, referring to Exhibit 5 before you, what does item 677 on the invoice represent?

A. Item 677, or rather, Job Order 677 as written covers the job order assigned the hull for that portion of the work covering the original contract in the amount of $41,655, listing items 1 to 57 inclusive.

(Testimony of Arthur Lindgren.)

Q. What does 678 represent?

A. 678 represents all additional work as covered in [98] Exhibit No. 4. The specifications in Exhibit No. 4, items 1 through 48, in the amount of $38,-191.

Q. Referring to Exhibit 6, at whose request was that invoice made up?

A. This invoice was made up at the request of Mr. Harry F. Williams.

Q. Did he state to you why he wanted it made out in that fashion?

A. Not necessarily, but it is customary for spare parts and machinery parts, if they are bought for a ship separately from ship repairs, to tender a separate invoice, and he wanted it. In this case, however, a great many of these parts were turned over to the chief engineer. Some of them were ordered by the chief engineer. Some of them were ordered by Mr. Williams himself. In this connection——

Q. Were there any writings in which you and Mr. Williams participated relating to the computation of these prices?

A. I don't quite follow you. Any writings?

(Job Order 678 work sheet marked Libelants' Exhibit 7 for Identification.)

Q. Handing you what has been marked Libelants' Exhibit 7 for identification, can you state what that is?

(Testimony of Arthur Lindgren.)

The Court: "If you know" would be one proper way.

Q. If you know? [99]

A. That represents the preliminary consolidation of approximately 110 or 115 job orders originally issued to cover additional work on the vessel.

Mr. Howard: At this time I would like to object to any further examination concerning this document for the reason that I do not believe it is proper redirect examination.

The Court: Do you care to respond to the objection, Mr. Hokanson?

Mr. Hokanson: May it please the Court, counsel in cross-examination has undertaken to impeach the witness' statements with respect to the manner in which these prices were arrived at. I am submitting this document at this time as evidence of negotiations by and between Mr. Williams and the witness with reference to fixing the price of the additional work.

The Court: As tending to establish knowledge on the part of Mr. Williams before the matter was finally concluded and approved by him, or what do you seek to prove?

Mr. Hokanson: Tending to show there were negotiations and bargaining, so to speak, over the amount fixed in the final job order which is No. 678, Exhibit 5, I believe, in evidence.

The Court: Which bears the written signature as approved [100] by Mr. Williams, is that your theory?

(Testimony of Arthur Lindgren.)

Mr. Hokanson: Yes, your Honor.

Mr. Howard: If the Court please, that is a subject they went into on direct examination as to negotiations of the final prices on the work.

The Court: The objection is overruled. Most of the emphasis in the matter was had in the cross-examination.

Q. There are certain writings on that document. Do you know who wrote the ink notations on the exhibit?

A. Yes. They were written by Mr. Williams.

Q. In whose presence?

A. In mine. Some of them, I believe, are mine, possibly one or two.

The Court: Ask him another question.

The Witness: It would be hard to identify immediately.

Mr. Hokanson: I offer the exhibit in evidence, your Honor.

Mr. Howard: I object to the exhibit for the reasons stated in my objection to the examination of this witness. It is a proper subject for direct examination but not for redirect examination.

The Court: That objection is overruled.

Mr. Howard: I further object to the admissibility [101] of this. I don't think it has been sufficiently identified.

The Court: I do not know whether there is some other aspect of it that you are not speaking of definitely, or what it is.

(Testimony of Arthur Lindgren.)

Mr. Howard: May I examine the witness very briefly on this?

The Court: Concerning the admissibility of the document only.

Mr. Howard: You mentioned some of the notations on here were by Mr. Williams and some by yourself. Are you able to differentiate the notations you made on this from those made by Mr. Williams?

The Witness: I would say 90 per cent of them, at least.

The Court: Were what?

The Witness: When he says, "differentiate," the thing is so full of pencil scratches it is hard to determine what portion he is referring to.

The Court: Whose figures in pen and ink comprise 90 per cent, and whose comprise the remainder?

The Witness: I would say 90 per cent of them comprise mine, and possibly 10 per cent represent Mr. Williams'.

Mr. Howard: Are you able to differentiate [102] between those as a matter of handwriting?

The Witness: Yes.

Mr. Howard: I have no further questions.

Mr. Hokanson: May I examine the witness further?

The Court: You may do so.

Q. Was that exhibit gone over by you and Mr. Williams? A. It was.

(Testimony of Arthur Lindgren.)

Q. What did you use it for?

A. We used it for the purpose of determining a mutually agreeable price on each of the items in the final specification. I explained before that this is a rough copy or work sheet covering a consolidation of some 115 items, resulting in possibly 60.

We further boiled this down in the interest of clarification of the whole thing and to further explain certain items in there to make the actual picture clearer, to a total of 48 items in the final specification.

Q. Who determined that the shop orders should be eliminated by number and consolidated?

A. Who determined? May I have that again, please?

Q. I will rephrase it. Did you, on your own initiative, make that consolidation?

A. I did not.

Q. Was it made at someone's request?

A. I made it at the request of Mr. Williams, with [103] my concurrence, because I thought it was a good idea.

Q. And do you know whose handwriting that is on Page 1, where it says O.K.?

A. That is Mr. Williams'.

Q. Are there any further markings on page 1 in Mr. Williams' handwriting, if you know?

A. Only some pencil scratches, or rather, ink scratches, eliminating item No. 2 as so stated.

(Testimony of Arthur Lindgren.)

Q. What about page 2? Are there any marks there by Mr. Williams with reference to price?

A. These pages are not numbered, counsel.

Q. Well, the second one as it appears in order.

A. Item No. 3, Item No. 5, Item No. 6.

Q. With respect to those items, what does the instrument show? A. It shows an O.K.

Q. In whose handwriting?

A. Mr. Williams'.

Q. Would you turn the page and look at the next page? Are there any writings on that page that you recognize to be in the handwriting of Mr. Williams? A. Yes.

Q. With respect to what items?

A. 7, 8, 9, 10, 11.

Q. Are they in ink or pencil? [104]

A. Ink.

Q. Those are Mr. Williams'?

A. That is right.

Q. The next page? A. Items 12, 13, 21.

Q. What with respect to those items did you observe? A. O.K.

Q. You mean—— A. They are O.K.'d.

Q. By whom? A. By Mr. Williams.

Q. And the next page? What does it show with respect to Mr. Williams' writing, if anything?

A. Nothing.

Q. And the following page?

A. Item 44 is stricken. Item 47 states that this is an ABS requirement. Item 52 is stricken, and several others are checked in ink.

(Testimony of Arthur Lindgren.)

Q. Those items that you have mentioned are in Mr. Williams' handwriting?

A. As near as I can determine, yes. They were done in my presence.

Q. Where you have mentioned the writing "O.K.", do you remember if anything was said when that notation was made in each case? [105]

A. You must appreciate——

The Court: No, answer the question.

A. The O.K., in my mind, refers not only to the phraseology of the specifications but the——

The Court: Read the question.

(Last question read by reporter.)

The Court: You must answer yes or no.

A. Yes.

Q. If so, what?

A. I wish that could be rephrased, your Honor.

Q. State, if you can, what was said when the notations that you referred to were made?

A. It was stated by Mr. Williams that he was satisfied with the language of the specification and with the price agreed to. Further, he recommended that I insert certain items for clarification as noted in the pencil handwriting on various items throughout, this to better explain the job performed. This was done with his collaboration and mine.

Mr. Hokanson: I offer the exhibit.

The Court: Were all of the pencil memoranda that appear on that exhibit made in your handwriting?

(Testimony of Arthur Lindgren.)

The Witness: Yes, they were, your Honor.

The Court: You may proceed.

Mr. Hokanson: I have offered the exhibit. [106]

Mr. Howard: I have already made an objection to the exhibit, which has been overruled. I have no further objection other than the one already stated.

The Court: The objection is overruled.

Libelants' Exhibit 7 is now admitted.

(Libelants' Exhibit 7 received in evidence.)

USE 15766
DELIBIT EXHIBIT 7
ADMITTED APR 7 - 1949

COMMERCIAL SHIP REPAIR
MARINE DIVISION

Job Order No. 678

August 6, 1948

Vessel: M.T. "Urania"

Additional Work

1. Furnish services of qualified Diesel engine machinists to work in engine room as directed by Chief Engineer.
Furnish necessary labor and material to make repairs to main engines and pumps as requested and directed by Chief Engineer.
Test six (6) exhaust and intake valves hydrostatically for leaks. Face valves and valve seats, grind in and test for tightness.
Test six (6) air starting valves, grind in and make tight three (3) air starting valves.
Clean up and test eight (8) fuel injection nozzles.
Remove cylinder head studs from five (5) cylinders.
Install new liners in five (5) cylinders.
Disconnect and remove thrust shaft, fly wheel and other interference and lift crank shaft. Reassemble and replace after work on crank shaft is completed by ship's force.
Make up necessary spacers for holding main bearing lower shells in place while fitting bearings.
Make up two (2) special 1" x 16" studs.
Machine main bearing bridge gauge.
Make up cylinder liner pulling gear.
Make up bracket and lever for fuel nozzle test stand.
Make up special equipment for engine throttle controls.
Ream holes in new cylinder brackets to accommodate cam shaft.
Install six (6) cylinders on engine.
Make up gaskets for fuel pump head.
~~Furnish riggers and crane service to remove engine parts, etc. from vessel and replace after overhaul.~~
Make up miscellaneous studs, bolts, and small parts for ship's force.
Furnish eight (8) mechanics to accompany vessel on sea trial for making adjustments and corrections developing from same.
Fasten engine room spare parts on bulkheads in locations as directed by surveyor.
Furnish labor and material to pull main engine cylinder liners. Clean and wrap, and store in warehouse.
Furnish labor and material and hang chain fall in warehouse to handle main engine pistons. Remove rings from pistons, clean grooves and have ready for new rings.
Furnish labor and material to disassemble cam shaft. Stone journals, clean up bearing and gears and reassemble.
Make up and install four (4) sets of air compressor valves as per sample furnished. (Total of sixteen (16) valves.)
Furnish services of factory representative to supervise operation of diesel engines.
Furnish and install fourteen (14) thermometers on main and auxiliary engines as directed by Chief Engineer and Mr. Williams.
Furnish and install two (2) rotary hand pumps to replace deteriorated ones presently installed.
Furnish labor and material to repair circulating system of main engine as necessary.

Furnish labor and material to make up four (4) stake wedges for Chief Engineer as per sketch.

OK

6704

Item 47 of original contract, renew or repair ... valves, piping and fittings found broken or defective during test.

Hot and cold water piping under floor plates and throughout engine room, main deck quarters, galley and officers quarters (cracked and broken from freezing).
Renew hot water tank in engine room.
Renew all steam heating lines on main deck to tanks, all piping running through pump room and under engine room floor plates to sea chests.
Renew piping and fittings for steam heating lines to officers and crews quarters.
Repair two radiators on main deck.
Renew faucets and drains on three (3) washbowls.
Renew piping and fittings on sanitary lines throughout ship.
Renew steam reducing valve to heating system.
Repair 2½" steam trap to hotwell.
Install smothering lines to forward hold.
Install piping from after peak tank for suction to fresh water pump.
Repair or renew piping, fittings and valves on fire lines throughout vessel as necessary.
Renew pipe lagging on deck steam lines and patch steam lines in quarters.
Re-route piping from lube oil tank to poop deck.
Remove unused CO_2 piping.

4. Furnish services of crane and rigger to handle ships stores on and off vessel, also provide stowage for same as directed by Captain and Chief Engineer.
~~Furnish services of truck and driver to handle material.~~

5. Furnish necessary labor and material to make repairs to auxiliaries as requested and directed by Chief Engineer.
Hydrostatically test cylinder heads and cylinder blocks on three (3) auxiliary engines, also exhaust manifolds.
Test and overhaul fuel nozzles for three (3) engines.
Test and recondition two (2) fuel pump and governor assemblies.
Reseat valves in cylinder heads and grind in valves on two (2) engines.
Overhaul two (2) saltwater circulating pumps.
Hydrostatically test cylinder heads and blocks on two (2) air compressors.
Open out water end of bilge pump and close up after inspection.
Install new diaphram on boiler feed pump.
Test crank shaft for defects on starboard auxiliary.
Make up two sounding rods for tanks.
Pull timing gear off cracked crank shaft and install on new crank shaft on starboard auxiliary.
Make up fitting for governor control rods.
Make up copper gaskets for engines.
Furnish equipment to pull cylinder liners and reinstall.
Remove broken studs from cylinder block auxiliary engine and air compressor and engine filters.
Make up flanges for filters.
~~Rigger and crane service for removing machinery to shop and to ship.~~

Furnish thirty-two (32) photostats of vessel as original.

7. Take up and install [illegible] flag box at after end of pilot house deckhead.

8. Disconnect, remove to shop and shop overhaul the following motors:

1 -	Fresh water pump	(Circ. 5-FB-127)
2 -	Air Comp. #2	(Circ. FB-122)
3 -	Fire Pump	(Circ. FB-123)
4 -	Bilge Pump #2	(Circ. FB-130)
5 -	Lub. Oil Pump	(Circ. FB-125)

Auxiliary Generator #1
Disassemble, wash out, bake dry, recheck, clean up as necessary, reinsulate (varnish), replace faulty or missing parts as necessary and reassemble.

Auxiliary Generator #2 (Armature)
Pull armature, completely reinsulate all windings, remove all armature coils and renew all commentator insulation, new mica V-rings and segment units.
(Note: All insulation on windings and commutator saturated with salt water.)

Motors on Clayton Boilers water soaked. Disconnect, remove to shop, overhaul. Reinstall.
Much of wiring to above motors low on insulation. Dry out and or replace as necessary.

Repair all indents on shell as directed and after completion of repairs hose test. ABS requirement.
After Peak Tank: Pair up three (3) deep floors and install suitable stiffening angle on each side of stern tube. ABS requirement.
Chip out and weld crack on main deck as marked. ABS requirement.
Renew section of damaged plating on wings of flying bridge.
Flush off and weld up deck in way of vent pipes on forecastle head.

Furnish labor and material to repair ship's lighting system as follows:

Remove ground from lighting circuit port side and below switchboard in engine room.
Replace missing covers throughout ship.
Repair open wiring where radio speakers have been removed.
Reconnect wiring in locations as necessary.

Furnish labor and material to perform the following:

Make two (2) new 3/4" galv. quarter shrouds for foremast.
Replace three (3) 1-1/4" turnbuckles.
Overhaul on cargo hose boom:
1 - 3" sheave block
1 - 2" sheave block
5 - single sheave blocks
Replace on cargo hose boom:
1/2" Wire on Topping Lift
1/2" Wire of Purchase Fall
5 - 1-1/2" Galv. Anchor Shackles

Make two (2) new shrouds on mainmast.

additional ork

12. Furnish and install flushing pump ~~motor~~.

F.O. Pump - Pump water soaked. Disconnect, ~~remove to shop,~~ overhaul, replace faulty parts. Reinstall.

13. Range port and starboard anchor chains for inspection, clean and paint with fish oil and lamp black. Clean out chain locker and spray with fish oil.
Remove port and starboard anchor chain to shop and anneal in furnace. After removal from furnace harden up all studs found loose by welding same and free up all shackles. Wire brush and apply one coat black paint. After drying connect to bitter end and re-ship chain.

14. Furnish necessary labor and material to remove small standby boiler from engine room.

15. Furnish labor and material to make wooden plugs and ~~stoppers~~ for each ventilator.

16. Furnish necessary labor and material to extend and relocate whistle at after end of chartroom.
Furnish labor and material to install ~~whistle valve~~ to galley house, complete with connections to ~~wings of bridge~~, handles etc.

17. Furnish and install new heating coils. Renew all refractories. Make new boiler casing. Rebuild dome to fit new casing, furnish and install new damper and insulate outside of casing. Do necessary pipe work to suit new installation. Press up boiler to 225 lbs. and prove tight to satisfaction of owners representative.

18. Furnish labor and material to make up forty name plates in Greek.

19. Furnish labor and material to steam clean diesel oil day tank and install same.

20. Furnish labor and material to extend transverse bulkhead forward end of after house 36" to port on main deck, relocate fire station to suit.

21. Furnish labor and material and install watertight door and weather coaming at after end of booby hatch on poop deck. Remove existing hatch coaming and cover, grind flush and finish old surfaces and corners smooth.
Add item 59

22. Furnish labor and material other than ship furnished to install radio telephone complete. ~~Manufacture~~ Add item 41.

Manufacture and install one (1) additional vegetable locker.

Relocate kedge anchor on after main deck and make suitable chocks for same.

Life Boats: Furnish labor and material to perform the following:
Provide missing floor board.
Provide and install ridge spreaders.
Provide and install air tank to suit bow and stern in the two (2) life boats.
Provide provision tanks in two (2) boats.
Make one (1) rudder as per sample.
Provide three (3) 10' oars.

(Testimony of Arthur Lindgren.)

The Court: Compare Exhibit 4 with Libelants' Exhibit 7, and after doing so, state if there is any relation between the two exhibits.

The Witness: May I have a moment, your Honor?

The Court: Yes, you may.

The Witness: There is definitely a relationship, because it appears that Exhibit 4 is practically a verbatim copy of Exhibit 7, with the corrections made noted on Exhibit 7, boiling the specifications down from a total of 60 items to a final total of 40, so there is definitely a relationship between the two.

The Court: I ask counsel for libelants why two exhibits relating to similar subject matter were used?

Mr. Hokanson: Your Honor, there is being called into question here the background of Exhibit 4. It is our contention, as evidenced by the signature thereon, that that represents the agreed price reached [107] at the time between Mr. Williams as the owners' representative and Commercial Ship Repair, represented at this time by Mr. Lindgren. In support of what Mr. Lindgren testified to, I offered No. 7 for the reason that it demonstrates that there was a discussion and a negotiation over these prices.

The Court: How does it do that? How does one exhibit differ from the other?

Mr. Hokanson: I believe that the numbering is not exactly the same in sequence, and there are

(Testimony of Arthur Lindgren.)

interlineations on No. 7 which do not appear on No. 4. I believe there is a further consolidation in respect to the total number of items on No. 4, moreover, than on No. 7. I think it vouches for the testimony of Mr. Lindgren.

The Court: I ask the witness what is the difference, if any, between the two exhibits? What information does one reflect different from the other?

The Witness: So far as the information reflected is concerned, they would be the same. As I say, there is a difference in the number of items; 1 through 48 on one and 1 through 60 on the other, some items being eliminated on 7, some of these being consolidated with other items in No. 7 to result in the 48 items. [108]

The Court: Do you think the marginal notations mentioned by you with respect to Exhibit 7 occur in respect to Exhibit 4, the marginal notations which you have said have been in certain persons' handwriting? Do those marginal notations appear identical in the two exhibits?

The Witness: They do not.

The Court: One has them and one does not?

The Witness: Exhibit No. 7. There are no notations on Exhibit No. 4.

Mr. Hokanson: You may examine.

Recross-Examination

By Mr. Howard:

Q. Were all of the pencil notations appearing

(Testimony of Arthur Lindgren.)

on Exhibit 7 present at the time you discussed this document with Mr. Williams? A. They were.

Q. Have any changes been made in that document since that time?

A. No, sir, not to my knowledge.

Q. Will you look at it once again and see if there are any that you now become aware of?

A. There are items scratched out, etc., but I wouldn't be able to determine whether that was done last [109] night or three months ago, perhaps. To my knowledge, sir, there has been no change in it since the time it was first handed to Mr. Williams for his approval or otherwise.

Q. The figures in the righthand column in pencil are in your handwriting? A. Yes, sir.

Q. There are a lot of items in Libelants' Exhibit 7 that are not O.K.'d, isn't that true?

A. Without a detailed analysis, I wouldn't like to answer that question.

Q. Referring to the 4th, 5th and 6th pages, is it not true that those items are not approved or are not marked O.K. with the exception of 3 O.K.'s on the 4th page?

A. I may explain that this copy is what might—

Q. Can you answer the question, please?

A. Will you rephrase it?

Q. Referring to page 4 of the exhibit, is it not true that there are only 3 items containing an O.K. symbol on that page? A. That is true.

Q. Referring to page 5 of the same exhibit, are any of those items marked with an O.K. symbol?

(Testimony of Arthur Lindgren.)

A. No.

Q. Page 6, are there any items on that page indicated with an O.K. symbol? [110]

A. No.

Mr. Howard: I have no further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Hokanson: Mr. Williams.

The Court: Do you wish to call him as a libelants' witness?

Mr. Hokanson: Your Honor, this witness is under subpoena and I am not prepared to say now whether he is an adverse witness or not.

The Court: Now is the time to say it if you are ever going to say it.

Mr. Hokanson: I will declare him as an adverse witness.

The Court: Do you call him as such at this time?

Mr. Hokanson: Yes, your Honor.

HARRY F. WILLIAMS

called as an adverse witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows: [111]

Direct Examination

By Mr. Hokanson:

Q. State your name, please.

(Testimony of Harry F. Williams.)

A. Harry F. Williams.

Q. And your address?

A. 2553 Bedford Avenue, Brooklyn, New York.

Q. What is your occupation?

A. Surveyor and engineer.

Q. What is your experience as a surveyor?

A. I have been in business 14 years myself, and altogether, I have been in the marine business over 40 years, more than 40 years.

Q. Were you employed by the Compania Naviera Limitada on or about August 1948? A. I was.

Q. To represent that corporation respecting the repairs, alterations and renewals of the Motor Tanker Urania? A. I was.

Q. Did you attend the Urania during her repairs and alterations while she was at Winslow?

A. Continuously.

Q. When did you leave Seattle?

A. I think it was October. It was a Friday night before Columbus Day; I don't know the date offhand, October 9.

Q. When did you arrive at Seattle? [112]

Mr. Howard: If he knows.

A. The same day the bid was given out, opened.

Q. Then you remember having attended a meeting in Mr. Black's office on or about August 4, 1948? A. That's right.

Q. Did you supervise the job that was done for the owners on the Urania at Winslow?

A. I did.

(Testimony of Harry F. Williams.)

Q. Showing you Libelants' Exhibit 4, what does that represent, if you know?

A. That is a consolidation of a good many work orders put all into one grouping, because it mostly pertains to the engine.

Q. I am referring to the entire document now, and not just that. A. The entire document?

Q. Yes.

A. The entire document pertains to the extra work outside of the contract.

Q. Calling your attention under item No. 1, which appears on the first page, to the item denominated "furnished services of factory representative to supervise operation of Diesel engines," which appears about the seventh or eighth line from the bottom, do you note that?

A. I see the item, yes. [113]

Q. Was that item accomplished?

A. No, because the representative I wanted was at sea at the time.

Q. You made a request to get him, did you?

A. I called him up personally, and his wife told me he was at sea.

Mr. Howard: I object to that as hearsay.

The Court: The objection is sustained. Do not mention that in the absence of the person mentioned.

Q. If you know, why was that item left on the work order?

A. It may have been an oversight. It was an

(Testimony of Harry F. Williams.)

oversight on my part as well as the Commercial Ship Repair Company.

Q. Do you know whether they charged you for that item?

A. That I couldn't say unless I saw their work sheets.

Q. The responsibility of furnishing that factory representative was not that of the shipyard, was it?

Mr. Howard: If the Court please, this man has been claimed as an adverse witness, but it seems to me there is a limit to which counsel can lead the witness in his answers.

The Court: The objection is overruled.

A. It was a convenience on our part to have him.

Mr. Howard: I move to strike the answer as not [114] responsive.

The Court: Read the answer.

(Last answer read by reporter.)

The Court: The objection is overruled and the motion is denied.

Q. Considering further the exhibit that you hold, namely, Exhibit 4, will you state whether the rest of the work listed thereon was accomplished?

A. You mean the entire exhibit?

Q. Yes.

A. There was a couple of items that were not accomplished and one not in its entirety, but the rest of it was.

Q. Would be specifically point out what items were not accomplished?

(Testimony of Harry F. Williams.)

A. Well, the Diesel engine expert wasn't hired, for one, and item 46 was not finished because we cancelled part of it, and the clipboard, 47, was not removed. I would have to read it more carefully.

Q. You say item 47 was not accomplished?

A. No.

Q. No part of it accomplished?

A. No, we cancelled it because it was not necessary. 46 we cancelled. We didn't build this tool locker. There was part of this job done, which a credit should be given. [115] There should be a reduction on that one item there.

Q. On which item? A. On 46.

Q. There should be a reduction?

A. Yes, in the price.

Q. To what amount?

A. I think $200 should be taken off that item, because we did not build the storeroom.

Q. With the exception of the items you have noted, was the work accomplished?

A. It was all accomplished.

Q. Was it done to your satisfaction?

A. It was.

Q. Referring to item 1 of Exhibit 4, the first sentence says, "furnish services of qualified Diesel engine machinist to work in engine room as directed by chief engineer." Was any of the work on the main engine done independently by the shipyard?

A. Outside of rigging, no. It was under supervision of the chief engineer.

(Testimony of Harry F. Williams.)

Q. All work on the main engine was under the supervision of the chief engineer?

A. Right.

Mr. Hokanson: May it please the Court, it may help to shorten somewhat the testimony here. Mr. Howard [116] and I have reached a stipulation with respect to the main contract, which I believe is identified as Exhibit 1. My understanding is that it may be stipulated that the main contract, Exhibit 1, represents an agreed price contract for $41,655 and that all of the work listed therein was accomplished save one item, which is No. 36, and which libelants reserve the right to present testimony on, and the stipulation would be without prejudice to the right of claimant and cross libelant to challenge the competency or the workmanlike qualities of the services and material furnished.

The Court: State concisely whether or not you agree with that statement.

Mr. Howard: That is my agreement, if it is clearly understood that the stipulation goes only to the items of the main contract in the amount of $41,655, reserving to us the right to dispute item 36 of the main contract, and that this stipulation does not refer to the extra work.

Mr. Hokanson: I think it is clear that the stipulation includes the agreement that all work was accomplished save that one item.

Mr. Howard: That is right.

(Testimony of Harry F. Williams.)

The Court: The extras are covered by what [117] exhibit, if any?

Mr. Hokanson: No. 4, Your Honor, and Exhibit 6, I believe.

The Court: The exhibit related to No. 4 is No. 7?

Mr. Hokanson: That is right.

The Court: Was there something else you had in mind other than those two? There are invoices 1-10 for the spare parts for the auxiliary machinery.

Mr. Hokanson: Exhibit No. 6. We have not reached a stipulation with respect to that.

The Court: So then this does not refer to the extras in Exhibit 6 and 7?

Mr. Howard: 4, 5 and 7 is my understanding.

The Court: In Exhibit 4?

Mr. Howard: And 5.

The Court: Do you agree, Exhibit 5?

Mr. Hokanson: Your Honor, I believe No. 5 contains both the contract price and the additional work. It is in one exhibit, and therefore with respect to the first part of it, which is the same as Exhibit 1, our agreement would stand. As to the second part, which covers the additional work which is also covered by Exhibit 6, the stipulation does not stand.

The Court: May I suggest some words and see if you gentlemen approve? This stipulation does not [118] refer to the extras mentioned in Exhibits 4, 5, 6 and 7.

(Testimony of Harry F. Williams.)

Mr. Howard: That is agreeable to claimant, Your Honor.

Mr. Hokanson: That is right.

The Court: Then that will take care of it.

Q. Calling your attention to item No. 36 on Exhibit 1, was that item accomplished?

A. It was not.

Q. Why not?

A. Because the American Bureau inspector and I decided it would be better off to be left in there.

Q. Was any discussion had between you and Mr. Featherstone with respect to that item?

A. Yes, Mr. Featherstone agreed to do another job for me in exchange for it.

Q. Did he do it? A. He did.

Q. Was the job that he did of equal value to the amount assigned to No. 36? A. I think so.

Q. What was that other job?

A. He sprayed my whole deck for me and all the catwalk and all the discharge lines with the ship's paint, but he furnished the labor. [119]

Q. Was all of the rest of the work listed in Exhibit 1 accomplished to your satisfaction?

A. It certainly was.

Q. With the exception of those items on Exhibits 1 and 4 which you have already testified were not accomplished, was all of the rest of the work done in a timely manner?

A. It was done in a good manner.

Q. Was it done timely?

(Testimony of Harry F. Williams.)

A. Done in good shipyard fashion. It was done all right.

Q. Was any objection ever made with respect to the time which it took to accomplish the work by you?

A. No, I made no objection to time.

Q. If you know, was there any urgency about the completion of this job?

A. Not that I know of.

Q. Did Mr. Antippas ever request that the job be hurried along?

A. The last week or so, he was uneasy. He wanted to know when it would get out.

Q. By the last week, you have reference to the last week you were in Winslow?

A. That is right.

Q. Calling your attention to Exhibit 5, I will ask you whether your signature appears thereon? [120]

A. It is my signature.

Q. And referring to Exhibit 6?

A. That is also my signature.

Q. You had occasion during your supervision of this work to observe the crew of the Urania, is that correct?

A. You mean the sailing crew, the ship's crew?

Q. The ship's crew. A. Yes.

Q. In your experience as a marine surveyor and a seagoing man, do you have any opinion based upon your observation of those men as to their competency?

(Testimony of Harry F. Williams.)

Mr. Howard: Just a minute. Before he answers the question as to competency of the seagoing crew, I want to enter an objection that he has not established a qualification for rendering an opinion on that. He has been a marine surveyor for a number of years, but I submit to the Court that that in and of itself is not sufficient to establish his qualifications.

The Court: The objection is sustained. We will be adjourned until tomorrow morning at 9:30.

(At 4:48 o'clock p.m.,Thursday, April 7, 1949, proceedings adjourned until April 8, 1949, at 9:30 o'clock a.m.) [121]

April 8, 1949, 9:30 o'clock a.m.

The Court: When counsel are ready, you may proceed with the case on trial.

HARRY F. WILLIAMS

Direct Examination—(Continued)

By Mr. Hokanson:

Q. Mr. Williams, what licenses do you hold in connection with your work as a surveyor?

A. I have an unlimited license, any ocean, any tonnage.

Q. What type of license?

A. Unlimited license, marine.

Q. How long have you held it?

A. Since 1911.

Q. Have you been to sea?

(Testimony of Harry F. Williams.)

A. Yes, many years.

Q. How many years have you been acting as a surveyor?

A. I have been a private surveyor for the past fourteen years. [122]

Q. Prior to that time?

A. I was employed with different engine companies as field engineer, worked for the Bethlehem Steel Corporation at Quincy, as trial engineer, Standard Ship Corporation, Soldiers Island, New York. I have worked in various shipyards throughout the country.

Q. During your supervision of this work at Winslow on the Urania, you were in close contact with the men who were doing the work?

A. Absolutely, associated with them daily.

Q. And you had occasion to observe their competency in performing that work, did you not?

A. I did.

Q. What is your opinion as to the competency of the supervisors and the personnel of Commercial Ship Repair who worked on the Urania?

A. They proved all right, as any other shipyard. They were competent and they knew their job. They didn't have the best of men, but they made the best of everything, seeing that the job was carried out properly.

Q. What about the material that was furnished to the vessel?

A. The material was okay, because it had to pass

(Testimony of Harry F. Williams.)

the American Bureau, the standard practices of shipbuilding and ship alterations. [123]

Q. It also met with your approval, did it?

A. It had to.

The Court: I believe he asked you what the fact was. Did it or did it not?

A. It met with my approval, yes.

Q. Handing you Libelants' Exhibit 6, that covers the certain items of spare parts, and I assume that those parts were furnished to the vessel?

A. They were.

Mr. Hokanson: At this time, Mr. Howard, do you have in your possession a report furnished by Mr. Williams to the owners of the Urania?

Mr. Howard: Yes, I have.

Mr. Hokanson: May I have it, please? I ask that this be marked for identification.

(10-27-48 report marked Libelants' Exhibit 8 for Identification.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 8, can you state what that is?

A. That is a surveyor's report made out by my firm, delivered to Compania Naviera Limitada, Panama, which is a customary report after the completion of any job done.

Q. Does it bear a signature at the end?

A. It bears a signature, yes, sir.

Q. Whose signature is it, if you know? [124]

A. It is my signature.

(Testimony of Harry F. Williams.)

Mr. Hokanson: I offer the exhibit in evidence.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 8 received in evidence.)

LIBELANTS' EXHIBIT NO. 8

Report
Burke & Williams
Engineers-Surveyors-Appraisers
October 27th, 1948.

Compania Naviera Limitada, Panama
Simpson, Spence & Young
52 Broadway, New York, N.Y.

M. T. "Urania"

Gentlemen:

At your request I attended the M. T. "Urania" while the vessel was lying at Foss Dock, Seattle, Washington and while lying at the Commercial Ship Repair Company's yard, Winslow Division, Blakely Island, Washington on August 3rd 1948 and subsequent dates for the purpose of classifying and conversion of the ex U.S. Navy Tanker YO 73.

Length Overall	216′ 6″
Length Water Line	210′ 6″
Beam	32′ 10¼″
Maximum Draft (about)	12′ 8⅝″
Cargo Capacity (about)	9960 Bbls.

The following specification was sent out for bid and the Commercial Ship Repair being the lowest bidder was awarded the contract.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Drydocking

Drydock vessel for cleaning, painting and specified repairs. On completion of work, undock vessel.

Underwater Painting

Scrape and wash down underwater body of vessel to remove fouling and loose scale. Touch up bare spots below deep load line with bareplate primer. Paint hull from keel to deep load line, port and stbd., with one coat of AC paint. Paint hull from keel to light load line port and starboard, with one coat of AF paint. Paint hull from light load line to deep load line, port and stbd., with one coat of boottopping paint. Owner to furnish paint.

Hull Marking

Paint in draft marks at bow and stern. Paint name of vessel on bow, port and starboard.

Paint name and hailing port of vessel at stern.

Paint in Plimsoll marks, port and starboard sides.

Name Board

Manufacture and install suitable name boards on bridge, port and starboard.

Sea Valves and Strainers

Remove strainers from sea chest for examination.

Clean and paint sea chests and strainers and replace strainers in good order.

Open out all sea valves for examination. Overhaul, grind-in, repack and repaint all sea valves and close up in good order.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Tailshaft

Draw propeller tailshaft for examination. On completion of examination reinstall tailshaft and make up in good order. Depack stern gland with new packing.

Rudder

Rudder to be opened and drained as necessary for complete examination of rudder and stock. On completion of examination close up in good order and repack stuffing box with new packing.

Zinc Plates

Quote pound price for replacement of zinc plates found to be missing or deteriorated. Zincs to be secured by stainless steel studs and nuts made up in good order.

Propeller

Clean propeller by wire brushing.

Fair up and dress off minor indents in tips of blades.

Separate work order to be issued to cover any major work found to be necessary.

Cargo Tanks and Piping System

Remove and dispose of approximately 3000 bbls. of ballast and sludge presently in eight (8) cargo tanks.

Clean tanks and piping system and certify "gas free" for hot work and internal examination.

Test tank heating coils and report condition found.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Open out all cargo valves, both on deck and in tanks, for examination.

Overhaul valves, grind in, repack and rejoint and make up in good order.

Free up all control reach rods of internal tank valves and repack at deck glands.

Open vapor-vacuum valves for examination. Free up as required and close up in good order.

On completion of tank cleaning and internal examination test tanks hydro-statically to requirements of ABS. On completion of testing remove testing water as directed.

Cargo Pumps

Open cargo pumps and motors and clean up for ABS examination. On completion of examination close up in good order.

Cargo Tank Ullage Covers

Free up and lubricate all dogs and hinges on cargo tank ullage covers. Renew gaskets on cargo tank ullage covers. Prove in good order.

Fuel Oil Tanks

Remove diesel oil from fuel tank located in way of engine room and clean tank. Certify tank "gas free" for internal examination and hot work. On completion of internal examination test tank hydro-statically to requirements of ABS.

On completion of testing drain tank free of water and reload diesel oil in tank. Provide suitable stor-

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

age for diesel oil while tank is being cleaned and tested.

Forepeak and Aft Peak Tanks

Drain and clean out forepeak and aft peak tanks for internal examination. It is assumed that these tanks are ballast tanks and are not contaminated. On completion of internal cleaning and examination tanks to be coated with one coat cement wash.

On completion of above work tanks to be hydrostatically tested to requirements of ABS.

On completion of testing remove testing water and leave tanks dry.

Fresh Water Tanks

Drain and clean out fresh water tanks located port and stbd. in way of engine space. Open tanks for internal examination.

On completion of examination tanks to be coated with one coat cement wash.

Tanks to be hydrostatically tested to requirements of ABS.

On completion of test leave tanks full of fresh water.

Ballast Tank Conversion

Forward Deep Tank presently fitted as a ballast tank to be converted to use as diesel fuel tank as follows:

Open tank and clean for internal examination.

Connections between tank and forward bilge and

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

ballast pump, are to be removed and suitably blanked off.

Furnish and install an electric driven fuel oil transfer pump, rotary type, Viking or equal, capacity 10 gpm., as described in section S47 of Conversion Specifications.

Pump to be suitably located in storeroom over tank space.

Furnish and install fuel oil piping in general accordance with contract plan S37-7.

On completion of work close up tank in good order and test tank and new piping to requirements of ABS.

On completion of test remove all test water from tank and leave ready to receive fuel oil.

Gun Tubs and Ammo Lockers

Remove all ammunition lockers and ready service boxes from decks. Remove splint apron and gun pad from poop deck, plug anchor bolt holes watertight.

Remove superfluous sections of forward gun tub leaving section in way of catwalk.

Install suitable handrails and curtin plates in way of catwalk forward where sections of gun tub removed.

Chip off all rough edges and grind smooth.

Ladders and Handrails

Fair and refit all deck ladders and handrails where damaged and install new handrails where missing.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Refit and rig bulwark stanchions at port and stbd. sides of main deck and fit out with new wire and turnbuckles. Any missing stanchions to be furnished by owners.

Port Lifeboat

Fair out indents in hull of Port lifeboat and restore to original good order.

Watertight Doors and Scuttles

Free up all dogs and locking gear, including hinges, of all watertight doors and scuttles leading from weather decks to forecastle and after house. Thoroughly lubricate and prove in good order.

Mushroom Ventilators

Free up, lubricate and prove in good order all mushroom ventilators on weather decks.

Ventilation Systems

Check out all ducts and blowers in ventilation system throughout the vessel and report condition found.

Electrical System

Megger test all electrical circuits, motors and generators throughout vessel to requirements of ABS and report conditions found.

Reassemble and properly close up all open junction boxes, switch boxes and outlets.

Renew fuses on all switchboards where standard fuses fitted.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Report all deficiencies found in electrical system.

Check markings on all electrical switch boxes and relabel correctly as found necessary.

Separate order will be issued for all equipment renewals found to be necessary to restore to good order and operating conditions.

Fire Fighting Equipment

Check, test and/or weigh all fire extinguishers and CO^2 bottles and report condition found.

Ships crew will recharge all liquid extinguishers.

Separate order will be issued for recharging CO^2 bottles as necessary.

Engine Controls and Telegraph

Test out Pilot House controls to main engine and engine order telegraph and report condition found.

Free up and lubricate mechanical equipment found in good order.

Steering Engine and Controls

Test out steering engine and steering gear and report condition found.

Free up and lubricate mechanical equipment found in good order.

Remove locking device from rudder before testing.

Gauges and Indicators

Check out all gauges and indicators throughout vessel and report condition found.

Gauges and indicators where dismounted to be reinstalled and connect in good order.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Flag Pole

Damaged fiagpole at poop to be faired and refitted as originally installed.

Check and repair electric connections and fittings to restore to good order.

Whistles

Check out and test whistles and report condition found. Make minor adjustments and connections found necessary.

Mooring Winch

Furnish and install suitable electric driven mooring winch for handling of stern lines. Motor drive to operate at 120 V.D.C. and to be approximately 3 to 5 HP.

Controls to be located in convenient location as directed and to be weather-proof.

Wheelhouse Doors

Furnish and install two (2) new metal doors at wheelhouse, port and starboard sides.

Frame to be fitted to accomodate new doors.

Doors to be fitted with all new hardware including holdback and ajar hooks.

Navigation and Flood Lights

Check out and refit as necessary, all navigation lights, search light and deck flood lights and prove in good order.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Mast Rigging

Mast rigging and fittings shall be examined and existing equipment repaired to restore to original good order, any renewals to be furnished by owner.

Screendoors

Renew damaged or missing screening in screen doors throughout vessel.

Renewals to be bronze or copper screening.

Sprinkling System

Sprinkling system to forward ammunition locker to be removed in its entirety.

Ammo. Storeroom Bulkhead

Remove designated section of bulkhead at forward ammunition storeroom.

Plumbing and Heating Systems

Check out all plumbing and heating fixtures presently on the vessel and repair as found necessary to restore to good order.

Vessel to supply any missing or damaged fixtures.

Connect all piping, close all drains, test out and free up flushometers.

Crews Quarters—Port Side, Main Deck

Furnish and install crews quarters to accomodate eleven (11) men in four (4) rooms on Port side, Main Deck as per arrangement plan #837-1 and in accordance with details specified in conversion specifications.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Crew Quarters—Starboard Side, Main Deck

Furnish and install crews quarters to accomodate two (2) men in one (1) room on starboard side, main deck aft together with sanitary facilities adjacent thereto as per arrangement Plan #837-1 and in accordance with details specified in conversion specifications.

Messroom

Furnish and install joiner bulkheads in way of officers messroom to suitable divided space and segregate from adjacent crew messroom as directed.

Officers Quarters—Boat Deck

Furnish and install new section of deck house at port and starboard sides of existing Captains Quarters on Boat Deck as per Arrangement Plan #837-1 and in accordance with details specified in Conversion Specifications.

Soil lines and piping to Officers Toilet and Shower Room in way of Refrigerator space to be rearranged to accomodate refrigerator space arrangement.

Captains Stateroom

Captain's Stateroom to be thoroughly cleaned out and furniture and fixtures rearranged and refitted to restore to original good order.

Refrigeration Space and Equipment

Furnish and install Refrigeration Boxes and equipment essentially as per Arrangement Plan #837-1 and in accordance with details specified in

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

conversion specifications. Hotel type domestic refrigerator presently located in this space to be removed, overhauled to restore to good order and reinstalled with all fittings and controls in ship's Galley as directed.

Space as detailed in Arrangement Plan to be enlarged by extending starboard bulkhead approximately three (3) feet to starboard side to allow use of center section in way of entrance door for passage of fire main and electrical wiring as presently installed.

Center section will not be insulated but will be used for access to Meat Box on Port Side and to Vegetable Room on starboard side.

Controls for individual boxes to be located in center section adjacent to boxes served and compressor to be located conveniently in Engine Space.

Galley

Remove domestic refrigerator and bread box and install hotel type domestic refrigerator to be removed from Refrigerator space.

Clean up service tables by wire-brushing to bare metal. Check out Galley electric range and report condition found.

Repair cowling over galley range to restore to original good order.

Overhaul galley range exhaust blower as necessary to restore to original good order.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Clayton Boilers—(2)

Clean out two (2) Clayton Boilers located in Engine Space. Thoroughly check out, examine and test all parts and controls and report condition found.

Anchor Windlass

Check out anchor windlass, drive motor and controls and report condition found.

Assemble parts in good order and test windlass to ABS requirements.

Thoroughly lubricate.

Steam and Water Lines

Connect up and test out existing fewsh water, steam, sanitary and fire lines throughout vessel and report condition found. Renewals found to be necessary to be covered by separate work order.

Panama Bitts

Furnish and install two (2) ten-inch (10") Panama Bitts. Bitts to be located on fo'csle head, port and starboard, as directed.

Skylight Operating Gear

Free up and lubricate operating gear of engine room skylight and prove in good order.

Chart Room

Furnish and install Chart Room to be located aft of Captain's Quarters on Boat Deck approximately 8 feet x 8 feet x 7 feet. (Revised item to be issued giving details.)

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Chain Pipe Covers

Furnish and install chain pipe covers as required. Free up and refit existing dogs and covers on chain pipes and hawse pipes, port and starboard.

Pipe Lagging

Check out entire vessel for defective pipe lagging and report condition found.

All defective lagging to be renewed or repaired to restore to good order.

Dry Storeroom Shelving

Metal shelving and bins to be furnished and installed as directed in space below main deck, aft of engine room.

Vegetable Locker

Furnish and install suitable vegetable locker, with lock, on poop deck as directed. Locker to be constructed of expanded metal screen.

Door Locks

Renew or repair defective joiner door locks throughout vessel. Furnish keys with new locks.

Pelorus Stands

Remove two (2) Pelorus stands located at port and starboard sides of bridge.

Flush off cuts and grind smooth.

Remove degaussing wires and conduit from deck, chip off all supporting brackets, grind deck smooth and prime paint. Blank off openings in bulkheads fore and aft and prove watertight.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Furnish and install starting motor for auxiliary generator.

Remove spare piston and relocate. Build in storeroom in starboard forward corner of engine room over cargo pump motor. Storeroom deck to be constructed of diamond floor plate and angle frame supported from deckhead. Sides to be expanded metal with door, hasp, padlock and access ladder to same. Install shelves as directed.

Remove two clipboards at after end of engine room starboard side and build in two metal tool lockers with shelves, doors, hasps and locks.

Remove and replace engine room skylight for removal of engine parts.

Remove canvas and frame from after hatch, make up and install steel booby hatch.

Furnish services of two (2) qualified Diesel engine machinists to work in Engine Room as directed by Chief Engineer.

Furnish labor and material to make up four (4) stake wedges as per sketch.

Renew broken fitting and pipe found when testing.

Furnish services of crane and rigger to handle material on and off vessel, also provide stowage for same as directed by Captain and Chief Engineer.

Furnish services of truck and driver to handle material.

Purchase material and spare parts requested by Chief Engineer and as approved by Mr. Williams.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Owner's Surveyor.

Furnish necessary labor and material to make repairs to auxiliaries as requested and directed by Chief Engineer.

Note: Foreman to keep complete work list of work performed under this item and turn same into Accounting Department.

Furnish necessary labor and material to make repairs to main engines and pumps as requested and directed by Chief Engineer.

Note: Foreman to keep complete work list of work performed under this item and turn same into Accounting Department.

Furnish thirty-two (32) blue prints.

Make up and install plywood flag box at after end of pilot house deckhead.

Fasten engine room spare parts on bulkheads in locations as directed by surveyor.

Disconnect, remove to shop and shop overhaul the following motors:

Fresh water pump	(Circ. 5-FB-127)
Air Comp. # 2	(Circ. FB-122)
Fire Pump	(Circ. FB-123)
Bilge Pump # 2	(Circ. FB-130)
Lub. Oil Pump	(Circ. FB-125)
Aux. Gen. # 1	
Aux. Gen. # 2	

Shop overhaul to include:

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Disassemble, wash out, bake dry, recheck, clean up as necessary, reinsulate (varnish), replace faulty or missing parts as necessary and reassemble.

Fair all indents on shell as directed and after completion of repairs hose test.

After Peak Tank

Fair up three (3) deep floors and install suitable stiffening angle on each side of stern tube.

Install sounding pipe to main deck.

Main Engine Cylinders

Furnish labor and material to pull cylinder liners. Clean and rap, and store in warehouse.

Main Engine Pistons

Furnish labor and material and hang chain fall in warehouse so to handle pistons. Remove rings from pistons, clean grooves and have ready for new rings.

Main Generator

Purchase one (1) only crank shaft as directed.

Purchase crank bearing shells.

Purchase main bearing shells.

Furnish services of truck and driver to dispose of garbage.

Lighting

Furnish labor and material to repair ship's lighting system as follows:

Remove ground from lighting circuit port side and below switchboard in engine room.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Replace missing covers throughout ship.

Repair open wiring where radio speakers have been removed.

Reconnect wiring in locations as necessary.

Galley Range

Furnish labor and material to put galley range in good working order.

Mast Rigging

Furnish labor and material to perform the following:

Make two (2) new ¾" galv. quarter shrouds for foremast.

Replace three (3) 1¼" Turnbuckles.

Overhaul on cargo hose boom:

⅓" Sheave block

½" Sheave block

5 Single Sheave Blocks

Replace on cargo hose boom:

½" wire on Topping Lift

½" wire of Purchase Fall

5-1⅛" Galv. Anchor Shackles

Make two (2) new shrouds on mainmast.

Furnish and install flushing pump and motor.

F. O. pump—Pump water soaked. Disconnect, remove to shop, overhaul, replace faulty parts. Reinstall.

Motors on Clayton boilers water soaked. Disconnect, remove to shop, overhaul. Reinstall.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Much of wiring to above motors and motors covered low on insulation.

Dry out and or replace as necessary.

Range port and starboard anchor chains for inspection, clean and paint with fish oil and lamp black. Clean out chain locker and spray with fish oil.

Furnish necessary labor to handle and take inventory of all spare parts on ship.

Furnish necessary labor and material to remove small standy boiler from engine room.

Furnish labor and material to make wooden plugs and canvas boots for each ventilator.

Remove port and starboard anchor chain to shop and anneal in furnace. After removal from furnace harden up all studs found loose by welding same and free up all shackles. Wire brush and apply one coat black paint. After drying connect to bitter end and re-ship chain.

Chip out and weld crack on main deck as marked.

Remove existing nigger heads and manufacture and install larger ones as per instructions by Mr. Williams.

Furnish and install new heating coils. Renew all refractories. Make new boiler casing. Rebuild dome to fit new casing. furnish and install new damper and insulate outside of casing. Do necessary pipe work to suit new installation. Press up boiler 225 lbs. and prove tight to satisfaction of Owners Representative.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Furnish labor and material to make up name plates in Greek.

Day Tank

Furnish labor and material to steam clean diesel oil day tank and install same.

Galley Equipment

Remove and rearrange present dish lockers and shelves in galley and instal portlights in outboard and forward bulkheads.

Furnish labor and material to extend transverse bulkhead forward end of after house 36″ to port on main deck, relocate fire station to suit.

Furnish labor and material and install watertight door and weather coaming at after end of booby hatch on poop deck. Remove existing hatch coaming and cover, grind flush and finish old surfaces and corners smooth.

Furnish labor and material other than ship furnished to install radio telephone complete.

Manufacture and install one (1) additional vegetable locker.

Relocate kedge anchor on after main deck.

Life Boats

Furnish labor and material to perform the following:

Provide missing floor board.

Provide and install reach pole.

Provide and install air tank to suit bow and stern in the two (2) life boats.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Provide provision tanks in two (2) boats.

Make one (1) rudder as per sample.

Provide three (3) 10′ oars.

Furnish and install six (6) C.P.O. bunks.

2 in Hospital.

2 in Jr. Engineers room.

2 in Jr. Deck Officers Room.

Relocate navigation lights from top of pilot house to wings of bridge, make hinged covers, install chocker plate helmsmans stand etc.

Remove steam heating, piping and radiator in storage hold forward. Run two 1″ steam smothering lines from cargo heating system to forward diesel oil tank, forward pump room and paint locker. Mark valves for same.

Furnish labor and material to repair Captain's safe as necessary.

All vents on poop and forecastle to be 18″ high. Relocate padeye for foremast.

Provide plugs with chains attached and screens for all vent pipes.

Reroute piping from lube oil tank to poop deck.

Install guard over steam piping on deck. Provide drain on steam lines.

Install new duct to pump room exhauster. Approx. ⅛″ plating.

Remove unused CO^2 piping.

Extend sill heights to 18″.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Install linen lockers as directed by Mr. Williams.

Identify all steam smothering lines.

Post notice at the master stop valve for smothering system.

Renew section of damaged plating on wings of flying bridge.

Manufacture four (4) air compressors suction and four (4) discharge valves as per sample furnished by chief engineer.

Manufacture and install boarding ladder at location directed by Mr. Williams.

Furnish and install masts and sails for two (2) lifeboats.

Mast dimensions to be taken from present mast stop.

Furnish labor and material and test air bottles hydrostatically according to A.B.S. Specifications.

Furnish labor and material to install wood platform deck around pilot house controls as per instructions of Captain.

Furnish labor and material to install voice tube from Engineers room to engine room.

Remove and replace two mooring chocks from location port and starboard side of poop deck, aft to new location at life boat davits.

Furnish labor and material to overhaul lifeboat chocks and replace hinges.

Furnish labor and material to install additional pipe awning stanchions, spreaders, etc., on bridge.

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

Furnish labor and material to remove and replace lockers and build shelf for line stowage in steering engine room.

Furnish labor and material to manufacture metal cover to be installed on ladder in engine room space to protect gauge glass.

Furnish necessary labor to install owner-furnished radio direction finder.

Furnish services of factory representative to supervise operation of deisel engines.

Flush off and weld up deck in way of vent pipes on forecastle head.

Furnish labor and material to fabricate hinged doors on freeing ports. Port and Starboard side.

Furnish labor and material to fabricate hose stowage racks along starboard side of cat walk.

Do necessary work to stow eight (8) CO^2 bottles in rack in pump room and two (2) in engine room.

Purchase eight (8) swivel chairs as per instructions of Mr. Williams for officers' mess room and install.

Purchase and install necessary Foamite fire extinguishers and electric fans for vessel.

Furnish and install fourteen (14) thermometers on main and auxiliary engines as directed by Chief Engineer and Mr. Williams.

Furnish necessary labor and material to stow

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

spare boiler coils in location as directed by Mr. Williams.

Furnish labor and material to change voice tubing leading from Pilot house to pump room. New lead to go to Engine room.

Furnish and install two (2) rotary hand pumps to replace deteriorated ones presently installed.

Furnish labor and material to repair fire hose racks throughout ship.

Furnish one (1) steel boarding gangway 28′ long and make suitable stowage for same.

Renew broken toilet in aft crews quarters.

Purchase one butcher's block approximately 18″ square (table style—without legs—approx. 3″ in thickness).

Purchase two (2) Inclinometers.

Furnish labor and material to put sound power telephone in satisfactory operation.

Furnish labor and material to fabricate one settee in Captain's cabin, complete with cushions seat and back—also fabricate base for bunk in Chief Engineer's room.

Furnish labor and material to paint piping on main deck, piping guards, underside of catwalk and engine room fidley.

Furnish labor and material to repair circulating system of Main Engine as necessary.

Make necessary alterations to fire extinguisher hangers to accommodate Foamite type extinguisher.

All the above aforementioned work was per-

(Testimony of Harry F. Williams.)

Libelants' Exhibit No. 8—(Continued)

formed as directed by the American Bureau of Shipping; tested and approved by the Classification Society and necessary certificates were furnished to the ship.

Time required to do the above work, from August 2nd, 1948, to October 9th, 1948, requiring attendance of American Bureau and Radio Marine Corporation and Cummings Engine Company etc.

Very truly yours,

BURKE AND WILLIAMS,

Surveyor Attending:

/s/ HARRY F. WILLIAMS.

HFW/cs

Admitted April 8, 1949.

Q. Are all the things stated in that report true to the best of your knowledge and belief?

A. They are.

Q. Referring to what you said a moment ago with respect to the quality of the men working in the Winslow yard, in your opinion did the personnel compare with the average personnel of shipyards of this type? A. It does.

Q. Did you attend the dock trials of this vessel?

A. I did.

Q. Was there more than one dock trial?

A. Yes, there was.

(Testimony of Harry F. Williams.)

Q. How many were there?

A. I think there were three real dock trials.

Q. What is a dock trial?

A. It is run for the purpose of tuning up the engines and taking the kinks out of anything that is not right, and that is the only visible way of finding out, is to operate the machinery. [125]

Q. Do you remember when the last dock trial was conducted on the Urania?

A. The very last dock trial conducted on the Urania I wasn't there, because I was on my way to New York.

Q. With respect to the last dock trial that you attended, do you remember when that was?

A. A few days before the sea trial.

Q. What was the result of the last dock trial that you attended?

A. We had the machinery running for a couple of hours, then we shut down, made a couple of alterations, started them up again, and we kept doing that until we had it as near perfect as could be, ready for sea trial.

Q. Did you receive a report concerning the dock trial held after your leaving Winslow?

A. I did.

Q. From whom? A. From Mr. Gallagher.

Q. Who was Mr. Gallagher?

A. American Bureau inspector.

Q. Did the vessel take a sea trial before you left Winslow? A. Yes, sir.

(Testimony of Harry F. Williams.)

Q. Were you present on that sea trial?

A. I rode the ship and was all over the ship with [126] Mr. Gallagher and watched the performances and made necessary little alterations that happen on a sea trial, until it was satisfactory to Mr. Gallagher of the American Bureau, and then we returned to the yard.

Q. Was Mr. Featherstone along on that?

A. Mr. Featherstone was along.

Q. Upon the sea trial, did you observe the operation of the telemotor? A. Of the what?

Q. The telemotor system.

A. I knew that the telemotor was there. I didn't observe the operation of it. The vessel steered and obeyed the rudder.

Q. During the course of this sea trial, were you with Mr. Gallagher at all times during the progress of it?

A. The majority of the time I was with him.

Q. Do you remember whether Mr. Gallagher told you to take the chief engineer from the throttle of the main engine and put a machinist from Commercial Ship Repair on the throttle to instruct the chief engineer, under your direction and Mr. Gallagher's direction, as to how to operate the main engine properly from ahead to astern?

A. I don't remember that, no.

Q. At the completion of this sea trial, did you confer with Mr. Gallagher concerning the results

(Testimony of Harry F. Williams.)

of the trial? [127] A. I did.

Q. Were you satisfied with the trial?

A. We were satisfied with the trial after certain recommendations was done that were not right up to standard.

Q. What recommendations were those?

A. The tappets on the main engine had to be adjusted; the wedge pieces that were under the fuel valves had to be adjusted. That was so that the vessel would stop properly on the sea trial. It was kind of slowed over, it didn't function perfect, and that was the object of the second dock trial, which was a minor alteration.

Q. In other words, the only recommendations that were made were with respect to the main engine, is that correct?

A. No, there was other little things, but they didn't amount to anything.

Q. Speaking of the main engine, did the chief engineer of the Urania have direct charge of all work that was done in the engine room?

A. He did.

Q. Did he have his own crew working in the engine room while the ship was undergoing repairs at Winslow? A. Every day, yes.

The Court: Who was that?

A. The chief engineer.

Q. Of the Urania? [128]

A. Of the Urania.

Q. And the work there conducted was his responsibility?

(Testimony of Harry F. Williams.)

A. It was his responsibility, and also for the welfare of the ship, naturally.

Q. What was the function of the Commercial Ship Repair machinists in the engine room?

A. They worked as ordinary machinists.

Q. Under whose direction?

A. Under the direction of the chief engineer.

Q. Do you know whether the coolers or heat exchangers were removed from the main engine room of the Urania? A. They were.

Q. Do you know who removed them from the engine room?

A. Any mechanic that was told to do it. It could have been one of Commercial Ship's men or one of our crew. I am not sure which one took them off, but they were taken up to the shop.

Q. To what shop?

A. Up to the boiler shop, to be boiled out, cleaned and tested.

Q. Were they subsequently returned to the ship?

A. Naturally, the engine wouldn't function.

Q. Do you know whether they were cleaned and tested? A. They were cleaned and tested.

Q. What, in your opinion, would be an adequate hydrostatic test for coolers of the type on the Urania?

Mr. Howard: If you know.

A. Working pressure would be suitable.

Q. Referring now to the salt water side of the coolers? A. Absolutely.

(Testimony of Harry F. Williams.)

Q. A test of working pressure would be sufficient?

A. That is the rules of the American Bureau, which I don't know right offhand.

Q. Would that be true also as to the test on the lube oil side? A. It would be.

Q. Directing your attention to Libelants' Exhibit 4, on the first page thereof, the last item listed, "furnish labor and material to repair circulating system of main engine as necessary." Do you recall what that item covered?

A. You say it is the last item here?

Q. On the first page, yes.

The Court: May I interrupt you to ask that you first inquire of the witness what relationship, if any, those parts have to the parts that he has been discussing in the last few questions and answers?

Mr. Hokanson: If the Court please, I wanted to develop from the witness what this represented, if he knows.

The Court: That is agreeable to the Court, except that I would like to know sooner or later, and I would think [130] the logical time would be now, to identify it with reference to anything else, if anything else has been mentioned that is related to this subject you are inquiring about. In other words, has this any connection with the coolers?

Mr. Hokanson: That is what I would like to establish myself, Your Honor, from the witness.

Q. Do you recall what that shop order covered?

(Testimony of Harry F. Williams.)

A. "Furnish labor and material to repair circulating system of main engine as necessary"?

Q. Yes.

A. That could be some joints that had to be made, some valves that had to be ground in. It is the system of cooling the engine, could have been some pipes. Definitely, it is not clear enough here.

Q. I want to know, if you remember, what that particular shop order covered with respect to repairs to the circulating system?

A. The crew may have taken off pipes and valves, and if any of them were stiff or hung up or needed grinding in or testing, they were brought up to the shop, and that is why "furnish labor and material to the circulating system."

The Court: You have been talking before this last question was asked you about the coolers being removed from the engine room and about their being taken up to [131] the shop and cleaned and tested and returned to the engine room.

A. That is the same thing. It is part of the system.

Q. With respect to the work on the main engine room, such work as was done by Commercial Ship Repair was requested by you or the chief engineer, is that correct?

A. That is correct.

Q. And so with any particular shop order a directive would be given to Commercial Ship Repair as to what to do? A. Verbally.

(Testimony of Harry F. Williams.)

Q. Prior to your leaving Winslow, which I understand to have been on October 8, and upon completion of the trial run of the vessel, did you as the owners' representative accept the ship for the owners as having been completed to your satisfaction?

A. I accepted the ship to this extent: that the work was done and the ship was ready to go to sea.

Q. Were you in Mr. Black's office on or about August 4, 1948, in the presence of Mr. Antippas, the master of the Urania, Mr. Black, Mr. Finn and Mr. Sweetin?

Mr. Howard: Objected to as repetitious.

The Court: If it is repetitious and you admit that it is, of course the objection should be sustained. Have you anything to say about that?

Mr. Hokanson: Your Honor, it certainly is repetition since the matter has already been covered. I am merely attempting to anticipate the possibility of a contradiction of the earlier testimony that has been given with respect to what was said at that meeting. As I understand it, this witness is from New York and I don't know whether he is going to be detained here for the duration of the trial, and I want to develop at this time such answers as are pertinent to the case.

The Court: Did you say that it is repetitious?

Mr. Hokanson: I said that the matter has already been covered, yes.

The Court: The objection is sustained. My ques-

(Testimony of Harry F. Williams.)

tion referred to whether it had been covered by this witness.

Mr. Hokanson: No, not by this witness, Your Honor.

Mr. Howard: If the Court please, I made a definite note here that that question was asked this witness yesterday afternoon on direct examination.

The Court: Do you recall having testified to that?

The Witness: I think I have.

The Court: The objection is sustained.

Q. Did you see Mr. Black on Friday, October 8, before leaving for New York?

A. I think I did.

Q. Do you remember where? [133]

A. At his office, if I saw him.

Q. Isn't it true that Mr. Black informed you at that time that under no consideration would the Urania be allowed to leave Winslow until payment or arrangements for payment had been made by the owners covering the bill for services?

A. He may have said that to me, yes.

Q. When did you arrive in New York?

A. On Saturday, about 12:00 o'clock.

Q. Did you see Mr. Antippas when you arrived in New York?

A. I ran into Mr. Antippas in New York in a restaurant, and we didn't talk about business, and I was to meet him on Monday.

Q. You had an appointment to see him on Monday?

(Testimony of Harry F. Williams.)

A. That is right. I said I would be over in the office on Monday.

Q. Had that appointment been made prior to your arrival in New York? A. No.

Q. Were you in communication with Mr. Antippas during the progress of the work on the Urania?

A. You mean the entire period?

Q. Yes. A. Off and on, yes.

Q. By telephone? [134] A. Telephone.

Q. Did you have your appointment with Mr. Antippas on Monday, October 11?

A. Mr. Antippas was called out of town and I did not see him.

Q. How do you know he was called out of town? A. Because I called the office.

Q. Did you attempt to see him thereafter?

A. Tuesday was a holiday.

Q. Did you attempt to see him on Wednesday?

A. Yes. I ain't sure whether it was Wednesday or Thursday I met him.

Q. Did you undertake to see him on Wednesday? A. I am not certain.

Q. Mr. Antippas was at Winslow sometime during the work on the Urania, was he not?

A. Yes.

Q. Did you have any discussions with him with respect to the progress of the work?

A. Yes, I did.

Q. Was he satisfied? A. Apparently.

Q. Did you have any discussion with him at any

(Testimony of Harry F. Williams.)

time during the period the work was being conducted concerning a progress payment? [135]

A. At one of his visits, I suggested to him that woud he make a progress payment, and he said he would, but he wasn't bound to do it.

Q. Did you after that statement have any further discussion with him in person or by telephone?

A. I don't recall that I had contact with Mr. Antippas or his brother, but I did telephone, I think, on one occasion—two occasions.

Q. Concerning the progress billing?

A. Concerning the payment.

Q. What was said, if you remember?

A. It was left up to the General Steamship Company in Seattle to make the payment. The financial arrangements between them and Mr. Antippas I had nothing to do with, except that it was up to them to get it, and I think Mr. Lindgren went over there.

Q. Did you buy any parts for the main engine of the Urania?

A. That was up to me, yes. I bought some before I left New York, with Mr. Antippas' permission, and I also went to Oakland, California, to get a speedy delivery and bought some more additional parts.

Q. Do you remember what the price of the parts was that you purchased in Oakland, approximately?

A. I wouldn't want to guess. I haven't the bills. [136]

(Testimony of Harry F. Williams.)

Q. Did it amount to a substantial sum of money?

A. It did.

Q. Was it more than $10,000?

A. I would be guessing now. I haven't the bills.

The Court: What did you say the purpose of your trip to Oakland was?

A. To get a speedy delivery on engine parts. They are so jammed you don't get a quick delivery.

The Court: Did you say, in substance, that you went there partly to speed up delivery?

A. Yes, sir.

The Court: Did you make a statement as to whether or not the cost of the engine parts which you purchased exceeded $10,000? If so, will you repeat what you said?

A. I said I would be guessing, I wouldn't know. I haven't got the bills.

Q. Did you have full authority to purchase extra parts as necessary for the vessel?

A. Mr. Antippas gave me that privilege and power.

Q. And you had full authority, too, did you not, to order such additional work as you considered to be necessary in the conversion of the vessel?

A. I think so.

Q. And you did order the extra work, did you not? A. I did. [137]

Mr. Hokanson: That is all.

(Testimony of Harry F. Williams.)

Cross-Examination

By Mr. Howard:

Q. Your principal place of business is in New York? A. 8 Bridge Street, New York City.

Q. Did you come to Seattle from New York for this trial? A. I did.

Q. At whose request? A. Mr. Antippas'.

Q. After your arrival in Seattle, were you served with a subpoena? A. I was.

Q. By whom?

A. By this firm of—I don't know the man's name who gave it to me, but I went around the Athletic Club to see some of the boys, and I was handed a subpoena there.

Q. Were these gentlemen present at the time?

A. Yes, sir.

Q. That is, Mr. Hokanson and Mr. White?

A. That is right.

Were they the ones that served the subpoena on you?

A. No. They told me they didn't know I was coming and they didn't want me to get away, so they thought they [138] would subpoena me.

Q. At that time, did you discuss the details of this transaction relating to the Urania with Mr. White and Mr. Hokanson? A. No.

Q. Did you have any discussion with them concerning the work that had been done on the Urania?

A. No.

Q. After your arrival at Seattle, did you have

(Testimony of Harry F. Williams.)

any discussion with Mr. White or Mr. Hokanson concerning the work on the Urania?

Mr. Hokanson: I object, Your Honor. The question has been asked and answered.

The Court: The objection is overruled.

A. I answered it. No.

Mr. Howard: I have no further questions at this time. We will call this witness when we present our case.

The Court: Subject to that right, you may step down, Mr. Williams, and do not absent yourself from the trial unless the Court further consents to that.

The Witness: Yes, sir.

Mr. Hokanson: For the record, we are willing to release Mr. Williams from any further requirement to remain so far as the subpoena served is concerned. [139]

The Court: Does the respondent wish to make any statement in that connection?

Mr. Howard: No, Your Honor. We arranged for this gentleman to come out from New York. I am sure he will comply with our request to stay.

The Court: So far as the subpoena is concerned, you are released from further responding to the requirements of that subpoena. I take it in that connection that one point libelants have in making the request that he be excused so far as the subpoena is concerned is to avoid accumulation of costs pursuant to the subpoena?

(Testimony of Harry F. Williams.)

Mr. Hokanson: That would be one factor, Your Honor, and in addition we have no desire to detain the witness; but if he is going to be called in the case of the cross respondents, we certainly would want the opportunity to keep him here, if necessary, to develop our case in rebuttal. That is something we cannot anticipate.

The Court: Mr. Hokanson, either you excuse him on the subpoena or you do not, and there are no ifs and ands about his obligation to further attend this trial so far as the subpoena is concerned if he is excused by the Court from further compliance with the subpoena. [140]

Mr. Hokanson: In the status of the case as it now stands, we are willing to release him from the subpoena.

The Court: The witness is released from any further obligations under and pursuant to that subpoena which he described while he was on the stand.

(Witness excused.)

J. J. FEATHERSTONE

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name, please.

A. James J. Featherstone.

Q. And your residence?

(Testimony of J. J. Featherstone.)

A. 4318 West Juneau Street, Seattle.

Q. What is your occupation?

A. At present, I am a ship repair contractor.

Q. Are you one of the partners of Commercial Ship Repair? A. I am. [141]

Q. What has been your experience in the ship-building and ship repair business?

A. I worked at it since 1912.

Q. Would you state the history of your experience?

A. I started apprenticeship in 1912, completed that in 1916 and worked as a mechanic until about 1921, have been a supervisor of ship repair work and alteration work and new construction work more or less ever since.

Q. In what yards, Mr. Featherstone?

A. 1921-1931 with Todd Seattle Drydocks in charge of the second shift, and then to Winslow for supervisor. In 1932, I had charge of construction of three Coast Guard cutters, and went back to Winslow, then went to Tacoma for Todd's in 1938, had charge of the second shift and construction of the first five C-1's. I left there when the war started, started building minesweepers for the Navy.

The Court: What did you say you began doing in 1916, after four years?

The Witness: I worked at the old Commercial Boiler Works.

The Court: What kind of work?

The Witness: Boiler shop work.

(Testimony of J. J. Featherstone.)

The Court: You said after you were an apprentice for four years, you then began something else. What kind of work were you doing? [142]

The Witness: I got out of my apprenticeship in 1916, and went to work at the old boiler works, went to work as boilermaker.

The Court: May I remind you that when you are asked to repeat your answer, the words you already used are desired, not some other words. I am trying to find out what you said you did before, in 1916. You called it some classification of work. Did you say you began as a mechanic in 1916?

The Witness: Correct, sir.

Q. Mr. Featherstone, in what capacity did you serve at the Winslow yard in 1941?

A. General superintendent, first going there as superintendent of steel construction, and got shoved up to the general superintendent's job about three months after I was there.

Q. In what year? A. 1941, I think.

Q. What were your duties as general superintendent of the Winslow yard?

A. In charge of all production work, alteration work, new construction, and everything pertaining to the outside operation of the shipyard.

Q. Did that include repairs?

A. Everything. [143]

Q. And what kind of work was being done at Winslow during that period that you served as general superintendent?

(Testimony of J. J. Featherstone.)

A. We were building 220 foot steel minesweepers on one side of the yard. Most of the time we had a million dollars or more of repair work kicking around the yard from time to time.

Q. How long did you remain in that capacity at Winslow?

A. Until the expiration of the contract.

Q. Which was when? In what year?

A. About 1945 or 1946; 1946.

Q. Upon the end of that period, what did you do?

A. I went out here and opened up a little shop for myself.

The Court: Where?

The Witness: At Seattle, in the south end of Seattle.

The Court: Was that on land or on water? If it was either on land or on water, state exactly where it was.

The Witness: It was on land.

The Court: Where?

The Witness: In the south end of Seattle.

The Court: Did it have an address, the place where you were doing this work? [144]

The Witness: No, sir.

The Court: It was not on any street and did not have any street address?

Mr. Hokanson: If Your Honor please, Mr. Featherstone is quite hard of hearing.

The Court: You may proceed.

(Testimony of J. J. Featherstone.)

Q. The Court is interested to know if your shop that you opened up after you left Winslow had an address? A. Yes.

Q. Do you remember the address?

A. I can't recall the name of the street. It was sort of a jumbled-up affair, sort of behind the Merchants' Exchange in South Seattle.

Q. What did you do at that shop?

A. Welding, and any work that might come along.

Q. Connected with ship repair?

A. Partially, yes.

Q. When did you first enter upon the partnership known as Commercial Ship Repair?

A. I can't recall the dates exactly.

Q. In what year? A. 1945, yes.

Q. Was it after you left the Winslow yard?

A. That is right.

Q. Were you in your Winslow yard on October 13, 1948? [145] A. Yes.

Q. Was the Urania lying afloat at your dock at that time? A. Yes.

Q. Were you advised of the date, of the sailing date of the Urania?

Mr. Howard: Just a minute. This is definitely a leading question. I will object to the form of the question.

The Court: Sustained.

Q. Did you know at that time what the plans for sailing were of the Urania?

(Testimony of J. J. Featherstone.)

Mr. Howard: Same objection.

The Court: Overruled.

Q. Did you understand the question?

A. No. I would like it repeated.

(Last question read by reporter.)

A. That was the 13th.

The Court: You should say yes or no, and let him ask another question.

Q. Can you answer the question? Mr. Featherstone, did you have any knowledge on October 13, 1948, as to the sailing plans of the Urania?

A. Yes.

Q. When did you learn of those plans? [146]

A. About noon. The captain come to me and told me——

The Court: About noon on what date?

The Witness: On the 13th, sir. The captain told me that he had ordered a pilot and intended to shove off as soon as possible.

Q. Did he state when he was to sail?

A. He planned to sail about 12 o'clock that night.

Q. Did you communicate that information to your partner, Mr. Black?

A. Yes. I called him immediately.

Q. Did you have any communications with Mr. Harry Williams on or about Monday, October 11, 1948? A. Yes.

Q. What kind of communication?

A. I telephoned him in New York.

(Testimony of J. J. Featherstone.)

Q. Can you state what the substance of your telephone conversation was?

Mr. Howard: If you recall.

A. I asked him if he had made any effort to contact Mr. Antippas regarding the bill, as he knew the status of the ship and he knew what we intended to do if we did not receive payment before the ship left, that we were going to libel the ship.

Q. Do you remember what Mr. Williams said?

A. Yes. He said he was doing all within his power [147] to straighten the thing out, but to date had not had any luck, but would do all he could to contact Mr. Antippas and see what he could do.

Q. Did you have any further telephone conversation with Mr. Williams after October 11, if you remember?

A. Yes, I called him a second time.

Q. Do you remember when?

A. The day after.

Q. Do you remember the substance of that telephone conversation?

A. It seems as though it was a holiday in New York the following day. I was talking to him, I think on Tuesday, Monday or Tuesday. He said Wednesday was Columbus Day, therefore everything would be shut down and he would be unable to contact any of the officials of the company back there, he felt sure.

Mr. Howard: I believe the Court will take judi-

(Testimony of J. J. Featherstone.)

cial notice of the fact that Columbus Day is October 12th.

The Court: That may be true, but I am interested at this point in hearing the witness' testimony.

Q. On the occasion of this second telephone call, I understand you to have said that was on Tuesday, to the best of your recollection?

A. I think it was.

Q. Was anything said as to whether Mr. Williams had [148] yet seen Mr. Antippas?

A. No.

Q. Did he state whether he had or not?

A. No.

Q. Did you ever see Mr. Antippas at Winslow when the vessel Urania was undergoing repairs there? A. Yes.

Q. Do you remember when you saw him?

A. No, I don't know exactly what the date was.

Q. Do you remember what month it was in?

A. The month of September, I am sure.

Q. Where did you see him?

A. He came over to the shipyard to make a survey, on a visit.

Q. Did you talk to him? A. Yes.

Q. Was anyone else present besides Mr. Antippas and yourself?

A. Mr. Williams and the captain of the ship.

Q. What was the nature of your discussion, if you remember?

A. Sort of general, and we talked about the job.

(Testimony of J. J. Featherstone.)

Mr. Antippas did tell me that he thought we were doing a fine job, "keep up the good work, treat Harry right, be sure to give Harry anything he wanted." He voluntarily said, "I [149] will send you $30,000 as soon as I get back to New York, which will be Monday." I didn't ask him for any money. He voluntarily told me that.

Q. Was there any discussion by Mr. Antippas as to Mr. Williams' authority at that time? Did you understand the question?

A. I thought you were addressing Mr. Howard.

Q. I am directing the question to you, I am sorry. Was there anything said by Mr. Antippas at that time concerning the authority of Mr. Williams in respect to the work on the vessel?

Mr. Howard: Answer yes or no on that.

A. No.

Mr. Howard: Can you answer yes or no to that question? A. I said no.

Q. Calling your attention to Libelants' Exhibit 1, do you know whether item 36 listed thereon was performed? Would you look at item 36?

A. I have seen it already.

Q. What is that item?

A. Remove designated section of bulkhead at forward ammunition storeroom.

Q. And your answer to my question as to whether that was performed is no? [150]

A. No, it was not performed.

Q. Why was it not performed?

(Testimony of J. J. Featherstone.)

A. Mr. Williams and Mr. Gallagher agreed that it had no—there would be no advantage in taking it out. It would have a tendency to stiffen the structure above the main deck, and they decided not to take it out and so instructed me.

The Court: Taking it? What is "it"?

The Witness: The ammunition bulkhead, sir.

Q. Did you discuss with Mr. Williams the fact that that item was deleted?

A. No, Mr. Williams and I talked the thing over later and we agreed, that is he and I agreed, to carry out certain other work to cover that item rather than open up a new item.

Q. In lieu of that item?

A. In lieu of that item, that is right.

Q. What was that other work?

A. Painting the superstructure and catwalk, running from abreast of the bridge to the forecastle, and all of the trunks and the main deck.

Q. What was the value of that work? Was the value of that work equal to the value of the amount set opposite item 36 on the exhibit before you?

Mr. Howard: That is objected to as leading.

The Court: The objection is sustained. You can ask him with reference to the relative value.

Q. What was the relative value of the work performed by you in lieu of item 36 as compared to the cost assigned to item 36 on the contract as originally made?

(Testimony of J. J. Featherstone.)

A. We agreed it was about comparable, Mr. Williams and I, to the cost on the renewal of the ammunition locker.

Q. Did you have any discussions or negotiations with Mr. Williams with reference to heating coils for the boiler on the Urania? A. Yes.

Q. Can you state what they were?

A. The heating coil was a spare part for the boiler.

Q. If you know, were boiler coils furnished to the Urania? A. Yes.

Q. There was more than one set furnished?

A. Yes.

Q. Who furnished them?

A. Commercial Ship Repair.

Q. Did you purchase them from someone else, or did you have them in stock?

A. We had them in stock.

Q. Did you agree with Mr. Williams on the price of those coils? [152] A. Yes.

Q. What price did you agree upon?

A. I have really forgotten now, we jabbered back and forth so much.

Q. Calling your attention to Libelants' Exhibits 4, 5 and 6, were you present when Mr. Williams signed those documents? A. Yes.

Q. Where was he when he signed them?

A. Mr. Lindgren's office.

Q. At Winslow? A. Yes.

Mr. Hokanson: Without prejudice to the ob-

(Testimony of J. J. Featherstone.)

jection which I have heretofore made concerning the integrity of these documents from collateral attack by parol evidence with respect to what was said when they were signed, and in anticipation of an attack by the claimant corporation and cross libelant here on the integrity of the signature, I propose to ask this witness a question concerning what was said at the time, if anything, when these documents were signed.

The Court: Would it be convenient to opposing counsel for this to be done now, or do you think the likelihood of that question being gone into by respondents in connection with that cross libel is such that the matter should be left until after that occurrence takes place?

Mr. Howard: I have no objection.

The Court: You may proceed, and it is without prejudice to your right, if any, to object at the other occasion in the future that you mention.

Q. Was anything said on the occasion of the signing of those documents by Mr. Williams?

A. Not that I recall.

Q. He signed them in your presence?

A. That is right.

Q. Were you present on the sea trial of the Urania? A. Yes.

Q. That was conducted approximately when?

A. On the 6th or 7th, I think.

Q. Of what month? A. Of October.

Q. Who was present besides yourself, apart from the crew of the vessel?

(Testimony of J. J. Featherstone.)

A. Mr. Williams, Mr. Gallagher of the American Bureau, one or two of our supervisors that were requested to go along in case something should happen, such as a pipefitter and an electrician.

Q. Were any of your employees in attendance on the vessel on the trial run? [154]

A. Only those that were requested by Mr. Williams and the chief engineer to act as observers in the engine room and carry out any work that the chief engineer might require.

Q. Do you recall how long a trial run the ship had? A. Six or seven hours.

Q. Did the ship perform satisfactorily on that trial? A. Very much so.

Q. Did Mr. Gallagher issue any instructions during the course of this trial, if you remember?

A. Yes. He and Mr. Williams and myself were in the engine room. There seemed to be some confusion regarding the way that the chief engineer was applying himself at the throttle. Mr. Gallagher requested that Mr. Williams temporarily remove the chief engineer from the throttle and put one of our men at the throttle to instruct the chief engineer how to properly operate the throttle.

It seemed as though he was not timing himself right in the matter of going ahead and going astern, insisted he could do certain things that were impossible to do by the nature of the engine.

Q. Were Mr. Gallagher's instructions carried out? A. Yes.

(Testimony of J. J. Featherstone.)

Q. Were you on the dock trials of this vessel?

A. Yes. [155]

Q. Did the vessel perform satisfactorily on those occasions?

A. The same as any other dock trial I have ever been on.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. Mr. Featherstone, did you attempt to contact Mr. Antippas or the shipowners' office on October 11? That is the date you stated you called Mr. Williams.

A. No. I talked to Mr. Black and I let him handle all of that.

Q. Can you just answer yes or no? Did you attempt to contact the shipowners or Mr. Antippas?

A. No.

Q. How about on October 12? Did you attempt to contact the shipowners, Mr. Antippas or his office at that time? A. No.

Q. You sent no wire or message to them at all on those days? A. I don't know.

Q. You don't recall having sent any?

A. Not myself, no. I am not speaking for the company.

Q. Handing you Respondent's Exhibit A-3, can you [156] recognize that document?

A. Yes, I recognize it now.

Q. Did you send that telegram? A. Yes.

(Testimony of J. J. Featherstone.)

Q. When was it sent?

A. I think it speaks for itself.

Q. Well, what is your recollection of when it was sent; morning, afternoon or evening of the day shown on it? A. I don't recall.

Q. Mr. Featherstone, do you recall whether that telegram was sent before or after the ship was libeled? A. I think it was sent before.

Q. That is your best recollection? A. Yes.

Q. Will you look at the upper right hand corner and see if you can find a time date stamped on that exhibit before you now?

Mr. Hokanson: Are you asking him a question?

Mr. Howard: I am.

Mr. Hokanson: I submit, Your Honor, that he is directing the witness to perform an act and not to answer a question.

The Court: The objection is overruled.

Q. Do you find a time shown on there? [157]

A. No, I don't see it.

Q. Isn't it a fact that in the upper right hand corner of this Exhibit A-3, it shows 1948, October 13, P.M. 11:53?

Mr. Hokanson: Your Honor, I object. I submit the question is argumentative.

The Court: The objection is overruled. What is the answer?

The Witness: Yes.

Q. Did that refresh your recollection as to when that telegram was sent? A. Yes.

(Testimony of J. J. Featherstone.)

Q. Can you state for us now whether the telegram was filed for dispatch before or after the ship was libeled? A. Before.

Q. Is that the first time that you had reported directly to the shipowner as to your intention with respect to libeling the ship? A. Yes.

Q. Then you had not previously advised the owner of your intention to libel the ship?

A. We had the owners' representative there at all times. It is customary in shipyards—we work with the owners' representative and not the owner.

Q. Aside from your discussions with Mr. Williams, you [158] had not reported your intentions directly to the shipowner?

A. No, but Mr. Williams had.

Q. You had not done so?

A. In my presence.

Q. Were you aware of the fact that the General Steamship Corporation was acting as agent for the vessel at Seattle? A. Yes.

Q. Had you notified them of your intention to libel the ship? A. Yes, sir.

Q. When did you do that?

A. A day or two before we did it.

Q. Did you do that yourself?

A. No. Mr. Black—I called Mr. Black and he talked to Mr. Lund at General Steam.

Q. You don't know of your own personal knowledge what Mr. Black did?

(Testimony of J. J. Featherstone.)

A. That is right. I know that Mr. Black did, though.

Q. Did you ever talk to anyone in General Steam yourself? A. Yes, sir.

Q. When?

A. Several times, two or three times before the ship sailed. [159]

Q. How long before the ship sailed?

A. From a week to three or four days.

Q. What did you tell them then with respect to the Yard's intentions and the payment of this bill?

A. I told them we would have to libel the ship if they didn't get some money to us or some collateral, some guarantee, that we would receive payment on account of it being a Panamanian ship under a Panamanian flag.

Q. To whom did you speak in the General Steamship Company at that time?

A. Mr. Lund.

Q. And your recollection is that you talked to him two or three days before the ship was libeled?

A. It might have been four days, yes, sir.

Q. Did you talk to him more than once?

A. I think I talked to him twice.

Q. You have a definite recollection of advising him of the intention to libel the ship?

A. Yes. Mr. Williams was there when I talked to him over the phone.

Q. Referring again to Libelants' Exhibit 5, do you have 5 before you now? A. Yes, sir.

(Testimony of J. J. Featherstone.)

Q. Is that the invoice for the extra and contract work or—— [160]

Mr. Kokanson: No. 5 covers the main contract and the extras.

Q. Why was item 36 left in that invoice when you prepared it if the work wasn't performed?

A. At the request of Mr. Williams.

Q. Is that your practice, to leave such items in the billing even though work has not been performed?

A. Yes. We swap items right along, you bet, hundreds of them.

Q. Isn't it a fact that at the time these invoices and final specifications were presented to Mr. Williams for signature on or about October 8, that he advised you at that time he could not approve the amounts for the extra work? A. No.

Mr. Hokanson: For the record, my objection again with respect to collateral attack upon a written instrument, violation of the parol rule.

The Court: The objection is overruled.

Q. Your answer, please? A. No.

Q. Do you recall any statement having been made by Mr. Williams at the time these invoices and specifications were presented to him for approval?

A. There is always chatter, language that goes—when you are settling a bill, naturally a surveyor—I am [161] walking through the office, he is talking to Mr. Lindgren. There is bound to be some con-

(Testimony of J. J. Featherstone.)

versation regarding bills, I would be foolish to say there was none. Settling a bill of this kind, there is always a certain amount of talk, but there was no disagreement to any extent.

Q. Isn't it a fact that Mr. Williams told you he could only approve the bills and the invoices, specifications as to the work being performed and not as to the amounts? A. No.

Mr. Hokanson: Same objection.

The Court: Overruled.

Mr. Howard: I have no further questions.

Redirect Examination

By Mr. Hokanson:

Q. In answer to one of Mr. Howard's questions, you stated that Mr. Williams had in your presence notified Mr. Antippas of your intention to libel the vessel unless the bill was paid, is that correct?

A. He intimated through his conversation there was that liability, and why didn't he get some money out here.

Q. Was that a personal conversation?

A. He said, "Why don't you get some money out here so I can get back to New York and we can release this ship." [162]

Q. Was that a telephone conversation?

A. Yes, in Mr. Lindgren's office.

Q. Who made the call?

A. The captain made the call and was talking to Mr. Antippas, and immediately after the captain got through, Mr. Williams took the phone and

(Testimony of J. J. Featherstone.)

warned him we intended to libel the ship if we didn't get our money.

Q. You were present during the period of that conversation? A. Yes.

Q. Mr. Featherstone, were you at Winslow, Washington, when the United States Marshal went aboard the Urania with process to libel the vessel?

A. Yes.

Q. That was on October 13? A. Yes.

Q. Do you remember what time of day that was?

A. Kind of late in the evening.

Q. Do you remember the hour?

A. About 9:30 at night.

Q. Are you sure it was that late?

A. It might have been 8:30 or 8, from 8 to 8:30 in the evening.

Q. You don't know the exact time?

A. That is correct. [163]

Q. So that you wouldn't be sure whether that wire was sent before he arrived or after he arrived, referring to the Marshal?

A. I don't know.

Mr. Hokanson: That is all.

Recross-Examination

By Mr. Howard:

Q. What was the date of this telephone conversation in Mr. Lindgren's office at which time you report that the captain and Mr. Williams talked with Mr. Antippas? Can you relate that as to the other dates we have been talking about?

(Testimony of J. J. Featherstone.)

A. Probably not exactly, but Mr. Williams left on—I took him to the airport myself on Friday, I think it was about Wednesday, Thursday or Friday.

Q. It would have been a day or two before Mr. Williams left Seattle for New York?

A. I don't know.

Mr. Hokanson: I am going to object to this as beyond the scope of proper recross-examination. He developed this in his cross-examination. He is now developing it again on recross-examination.

Mr. Howard: If the Court please, this matter of the telephone conversation in Mr. Lindgren's office was developed on redirect examination.

The Court: You are not talking about the telegram; you are talking about the telephone conversation?

Mr. Howard: That is correct, in Mr. Lindgren's office, that this witness testified to for the first time on redirect examination.

The Court: You may inquire. The objection is overruled.

Q. Isn't it a fact that the invoices for the work performed on the Urania had not yet been prepared at the time this alleged telephone conversation was had?

A. They were worked up pretty well, only one or two items that were not completed.

Q. Had any invoices been presented to the owners or their representatives yet?

A. The owners' representative—they were

(Testimony of J. J. Featherstone.)

worked up, we had them right in order, but we were just about ready to have the signature on them.

Q. Referring to Exhibit 5, I believe you have it in front of you there, what is the date on that invoice?

A. Repeat that.

Q. Referring to Exhibit 5, will you please state the date of that invoice, that exhibit?

A. October 8.

Q. And that was the day that Mr. Williams left Seattle [165] for New York, isn't it?

A. I don't know, about October 8. I don't know whether it was or not.

Mr. Howard: I have no further questions.

Mr. Hokanson: That is all.

The Court: You may step down.

(Witness excused.)

The Court: At this point we will take a ten minute recess.

(Recess.)

FREDERICK J. HARPER

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name.

A. Frederick J. Harper.

Q. What is your residence?

A. Winslow, Washington.

(Testimony of Frederick J. Harper.)

Q. Your occupation?

A. I am chief accountant for Commercial Ship Repair. [166]

Q. How long have you been so employed?

A. Since April 1, 1948.

Q. What was your employment prior to that time?

A. For ten years prior to that, I was employed by the Winslow Marine Railway & Shipbuilding Company.

Q. In what capacity?

A. I originally went to work for them as accountant. I was advanced to supervisor accountant in 1941, and to assistant secretary and chief accountant in 1944.

Q. What is your training in accounting work?

Mr. Howard: We will concede that Mr. Harper is a qualified accountant.

Mr. Hokanson: Very well.

Q. Do you have charge of sending invoices and bills out from the Winslow yard? A. I do.

Q. Did you in September and October of 1948?

A. I did.

Q. Handing you what has been marked for identification as Libelants' Exhibit, can you state what that is?

A. That is an invoice to the Motor Tanker Urania and owners, dated September 8, 1948, covering progress billing No. 1, account repairs and alterations of the Motor Tanker Urania in the amount of $30,000.

(Testimony of Frederick J. Harper.)

Q. Do you know whether the original of that document [167] was ever mailed?

A. I know that it was mailed in the regular course of mailing invoices, together with other pieces of mail, on the date it was made up.

Q. The document bears a signature, does it not?

A. It does.

Q. Do you recognize it? A. I do.

Q. Whose signature is it?

A. Mr. H. F. Williams.

Q. Was it signed in your presence?

A. It was.

Mr. Hokanson: I offer the exhibit in evidence.

Mr. Howard: I would like to interrogate the witness about this exhibit.

The Court: Concerning its admissibility only.

Mr. Howard: Did you yourself mail this document?

The Witness: I did not put it in the U. S. Post Office box. I mailed it in our outgoing mail box, and it would be picked up in the normal course of business by the truck driver and taken to the Post Office.

Mr. Howard: I object to the admissibility of this exhibit, the offer of this exhibit, on the ground that it has not been sufficiently established as to the mailing of the exhibit so that it would be pertinent [168] as a matter in the consideration of this case.

The Court: Do you object that the mailing of it has not been proved?

(Testimony of Frederick J. Harper.)

Mr. Howard: Yes, Your Honor.

The Court: The Court reserves ruling for further testimony, if you desire to give it. One thing that is needed to be known in connection with it is whether or not postage was prepaid on it.

Q. Mr. Harper, do you have a recollection of making out that invoice?

A. I do. This invoice was prepared after my discussion with Mr. Williams, asking him in what manner he wanted an invoice prepared for an advance of $30,000. I was advised that we were to receive that advance. He talked with his owners—

Mr. Howard: I move to strike that part of the answer as not responsive to the question.

The Court: Just answer the question, and nothing else. Counsel inquiring will direct the answers by proper questions. Proceed.

Q. Do you remember whether the invoice was placed in an envelope? A. I do.

Q. Do you remember whether postage was placed upon the envelope? [169]

A. Postage was placed upon the envelope.

Q. Do you remember who put it on?

A. I did.

Q. What did you then do with the envelope?

A. I put it in the outgoing mail box at the yard.

Q. What is the custom with respect to your mailing practice at Winslow?

A. That is the custom. The mail is picked up by the truck driver and taken to the Post Office.

(Testimony of Frederick J. Harper.)

Q. Do you know whether the mail on September 8 was picked up?

A. Yes, I know. I checked the box the following morning to be sure the mail had been picked up, and there was no mail there on September 9.

Q. Is it your usual practice to check the mailbox the following morning? A. Yes.

Q. How long had that system of mailing correspondence obtained in the Winslow yard, to your knowledge?

A. Well, that has always been the practice. We are not close to the Post Office, it is about half a mile. The mail is picked up by the truck driver and taken to the Post Office. He picks it up from the Post Office and brings it down to the yard, the incoming mail.

Q. Who was the truck driver who performed that duty [170] in September, 1948, if you know?

A. It was either Mr. Barlow or Mr. Stretch. Mr. Stretch, our purchasing agent, often takes the mail up.

Q. Are both of those men in the employ of Commercial Ship Repair now? A. Yes.

Q. Was the envelope in which the invoice was placed addressed on the outside? A. Yes.

Q. To whom was it addressed?

A. It was addressed to Compania Naviera Limitada, c/o Simpson, Spence & Young, 52 Broadway, New York City, New York.

Q. Was a return address on the outside of the envelope, if you know? A. Yes.

(Testimony of Frederick J. Harper.)

Q. What was that return address?

A. It was a regular Commercial Ship Repair envelope. I don't recall whether the return address was Winslow or Bell Street. It was a printed envelope.

Mr. Hokanson: Your Honor, I again offer in evidence what has been marked for identification as Exhibit 2, with the request of the Court to allow me to introduce further evidence by the truck driver if the Court indicates that that is a necessary link in proof. [171]

Mr. Howard: Your Honor, I would like to renew our objection to the offer of this exhibit.

The Court: Then the Court will not rule upon it until further testimony is produced.

Mr. Howard: May I make a further statement?

The Court: You may do so.

Mr. Howard: My reason for making this objection is that our clients, our principals, deny receipt of it. I do not want to unduly prolong this hearing as to the necessity of further proof as to mailing, but I feel I must maintain an objection to the offer of this exhibit because of our insistence that the document was not received.

The Court: Do you object there is not sufficient proof as to prepayment of postage?

Mr. Howard: We have only the testimony of this witness on that.

The Court: The Court will not rule upon it unless and until I find out whether or not there is available further testimony.

(Testimony of Frederick J. Harper.)

Mr. Hokanson: We will submit further testimony as to mailing, and in view of that offer, with the Court's permission, I would like this witness to be allowed to testify further with respect to this document on the assumption that it will eventually be admitted in [172] evidence. I recognize that that is a procedure which is out of order, so that it may not be necessary to recall Mr. Harper.

The Court: One way of doing it, possibly, will be to promise the Court that you will supply certain testimony. That would be one way of doing what I think you have in mind, but what you have said so far does not amount to that.

Mr. Hokanson: May it please the Court, I can assure the Court that we will make every effort to establish that the document was mailed. The drivers Mr. Harper has testified to are still in the employ of Commercial Ship Repair and we will produce them. Whether the Court, after their testimony, will admit the document, of course, I cannot say, but with that statement I would further move the Court that I be allowed——

The Court: I think you should be prepared to say what further testimony you expect to offer.

Mr. Hokanson: I propose to present testimony by the truck driver who on the date of September 8 carried the mail to the U. S. Post Office and establish by him that all mail in the mail receptacle on that date was delivered and put in the United States mail. I submit that if this is established,

(Testimony of Frederick J. Harper.)

that we have [173] furnished all the necessary proof in respect of mailing.

Mr. Howard: If the Court please, I withdraw my objection to the admissibility of this document.

The Court: Libelants' Exhibit 2 is now admitted.

(Libelants' Exhibit 2 received in evidence.)

CAUSE 12766

LIBELANT EXHIBIT 2

APR 8 - 1949

INVOICE

12322

Specialists in All Types of Ship Repair

COMMERCIAL [redacted] EPAIR

[redacted] PIER 36 — DOCK STREET TERMINAL

SEATTLE 7, WASHINGTON

TELEPHONE MAIN 3122

M.T. "Urania" and Owners
Compania Xavier Limitada,
Panama
~~c/o Simpson, Spence & Young~~
~~52 Broadway~~
~~New York City, N. Y.~~
c/o Thomas Stranahan

Invoice Date: Sept. 8, 1948
Invoice No: 9-2 Winslow Div.
Requisition No:
Contract No:
Via: Job No. 677

~~NET CASH~~ Attention: Mr. D. Antippas

DESCRIPTION	PRICE	AMOUNT
Progress Billing No. 1		
To progress payment No.1 a/c repair and alteration to M.T. "Urania"		25 ~~130,000.00~~

~~Approved:~~

N F Williams

Mr. N. F. Williams
Owners' Representative

Insert Pg 174

(Testimony of Frederick J. Harper.)

Q. Referring to Exhibit 2, it bears certain pencil notations. Do you know whose handwriting that is?

A. It is my handwriting.

Q. Was it on the original invoice?

A. It was not.

Q. When was it placed on that invoice, the copy which has been admitted?

A. It was placed on this invoice at the time of preparing another invoice to the Motor Tanker Urania and owners, c/o General Steamship Company, in the amount of $25,000.

Q. Showing you Respondent's Exhibit A-2, do you recognize that document? A. I do.

Q. What is it?

A. It is an invoice to the Motor Tanker Urania and owners, c/o General Steamship Company, Compania Naviera Limitada, Panama, c/o General Steamship Company, dated [174] October 4, progress billing account repairs and alterations to Motor Tanker Urania, $25,000.

Q. Will you explain the reason for the pencil notations on Libelants' Exhibit 2?

A. The pencil notations were made by me for the purpose of instructing the girls to prepare the new invoice, dated October 4.

The Court: Bearing what, if any, exhibit number?

The Witness: Bearing Respondent's Exhibit A-2.

Q. What have you marked on Libelants' Exhibit 2?

(Testimony of Frederick J. Harper.)

A. I have crossed out "c/o Simpson, Spence & Young" with a pencil and put in "c/o General Steamship Company." I have likewise crossed out "$30,000" and above it written "$25,000" in pencil.

Q. At whose instruction was that new billing made?

A. I prepared the billing after discussion with Mr. Williams and Mr. Lindgren, I believe. The fact that there was $25,000 at General Steamship's office which we could obtain if we submitted a new invoice in that amount.

Q. Handing you Libelants' Exhibits 4, 5 and 6, were you present when those documents were signed?

A. I was present when they were signed.

Q. Where were they signed?

A. They were signed at the office at Winslow, Washington. [175]

Q. Do you remember the date?

A. October 8.

Q. And the year? A. 1948.

Q. Who else was present?

A. Mr. Lindgren was present, Mr. Featherstone was present, and myself, Mr. Williams. I don't recall anyone else.

Q. Did you witness the signing of them?

A. I did.

Mr. Hokanson: Again, Your Honor, without prejudice to our objection to the necessity of going behind the signature, reserving that objection, I will

(Testimony of Frederick J. Harper.)

ask the witness what was said if anything by Mr. Williams during the period when these documents were signed, if he remembers.

A. I remember that there was some discussion as to whether the sales tax applied, it being Mr. Williams' thought that sales tax, particularly on the invoice for spare parts, did not apply inasmuch as they were going out of the State of Washington. I believe I told him that since delivery was made in the state that the sales tax would apply.

Q. Did Mr. Williams make any other comment?

A. I don't recall him making any other comment.

Q. Did he comment with respect to the amount of the [176] invoices? A. No.

Q. Were you present at any time on or about October 6th or 7th or 8th when Mr. Lindgren and Mr. Williams were discussing Exhibits 4, 5 and 6?

A. I was present during the time that Mr. Williams and Mr. Lindgren were negotiating the price which was arrived at and is on these exhibits.

Q. Do you remember the date?

A. It was three or four days prior to October 8. They were negotiating all during that period.

Q. Do you recall any conversations that were had between Mr. Williams and Mr. Lindgren concerning the prices?

A. No, I do not. I didn't enter into the negotiation of the price. I was there, however.

Mr. Hokanson: May it please the Court, we have

(Testimony of Frederick J. Harper.)

heretofore announced our position with respect to the bills which have been presented in evidence to the effect that we conceive them to be an account stated, and that they represent the acceptance and approval by the owners of the Urania, which in turn eliminates any need for the libelants in their case in chief to establish the reasonableness of the prices.

I think by virtue of the stipulation entered into between Mr. Howard and myself concerning Libelants' [177] Exhibit 1, we are concerned here only with the price involved in the extra work known as Job Order 678 and with the price of the so-called spare parts which are contained on Libelants' Exhibit 6.

In view of the Court's ruling that the respondent may impeach, or present evidence tending to impeach the documents and the accounts stated, we propose at this time to present evidence through this witness with respect to how the records were kept on each of these jobs and as tending to show the reasonabless of the amount, reserving at all times our objection to the need to go behind these documents.

The Court: You may proceed.

Q. Mr. Harper, as chief accountant do you have charge of the records that are kept by Commercial Ship Repair at Winslow covering all items of labor, materials and services that are furnished to vessels under repair? A. I do.

(Testimony of Frederick J. Harper.)

Q. Would you describe what your system is for maintaining those records? May I add this to the question, what your practice was between August 6 and October 13, 1948?

A. We have developed a cost system based upon the elements of cost; namely, labor, direct purchase material, stores material and overhead that go to make up the cost of a job. Our labor is evidenced by time cards. These time [178] cards are weekly cards. They show on there the man's name, his occupation, his rate, the days that he worked during that week, and the distribution of his time. In other words, on which job he worked during that week and on any particular day. These cards are rated, the man's rates put on them. They are extended and from that a distribution of time is made up. The card is the basis for the payment to the man.

In connection with the items of material, we maintain at Winslow a stores account. We have a warehouse. Items drawn from that stores for use on any particular job are evidenced by a stores issue which is made up at the time the stores are withdrawn.

Further evidence of costs are direct purchases. The purchasing agent makes a purchase, he prepares a purchase order and submits it to the vendor, or the original copy. Two copies are maintained by the accounting department on that purchase order. It shows the job number on which the pur-

(Testimony of Frederick J. Harper.)

chase is made and the allocation of the purchase. To that purchase order, we attach our bill from the vendor when it is received and it is on the basis of that purchase order that payment is made.

Q. Do you have charge of those records?

A. I do.

(Time cards marked Libelants' Exhibit 9 for Identification.) [179]

Q. Handing you what has been marked for identification as Libelants' Exhibit 9, will you state what they are?

A. These are the time cards for the period the Motor Tanker Urania was in the yard.

Q. They are compiled on a weekly basis?

A. They are.

Q. And cover the entire period of the Urania at work? A. Yes.

Q. Are those cards used in connection with the time clock?

A. Yes, they are. On the face of the card is the man's name and his occupation, etc., as I have explained, and a place for a time clock punching by days, Monday through Sunday of any week.

Q. Who makes the entries on those cards?

A. They are made by clerks in the office.

Q. On what basis?

A. From information received from the foreman on the job.

Q. And those records are kept in the usual course of business at all times? A. Yes.

(Testimony of Frederick J. Harper.)

Q. How is it determined as to what particular job the time of any employee should be allocated?

A. At the time a job comes into the yard, a job order is issued. That order is given a number, and from that job order the foreman allocates the time of the people under his supervision to what they are working on.

Q. Who makes up the compilation of time from the cards?

A. That is made up in the office under my direction. The card at the end of the week is totalled. The man's pay is computed and the distribution of that time is made to the various job numbers.

Q. Referring to the time cards, the notation "hull number" appears on the reverse side thereof, does it not?

A. On the reverse side, there is job number and item number, the account number. A job number and hull number mean the same thing.

Q. In other words, hull number refers to the job number? A. Correct.

Q. And does not necessarily refer to a separate ship? A. That is correct.

Mr. Hokanson: I offer these cards at this time.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 9 received in evidence.)

(Book of records marked Libelants' Exhibit 10 for Identification.) [181]

(Testimony of Frederick J. Harper.)

Q. Handing you what has been marked as Libelants' Exhibit 10 for identification, will you state what that is?

The Court: If you know.

A. That is the stores issue for material issued from stock on hull No. 678 and hull No. 680 covering repair work on the Motor Tanker Urania.

Q. Hull No. 678 refers to what work, if you know, on the Urania?

A. Hull No. 678 refers to the additional work under the contract.

Q. Exclusive of the work that was done under the initial contract that was entered into?

A. That is true.

Q. What about 680?

A. 680 represents further additional work that was done exclusive of that contract.

Q. And that was designated as a separate item?

A. Yes, it is.

Q. Does that exhibit represent all of the stores issues for those two job orders?

A. I believe so, yes.

Q. And are those records kept under your supervision? A. Yes.

Mr. Hokanson: I offer these at this time.

Mr. Howard: No objection. [182]

The Court: Libelants' Exhibit 10 is admitted.

(Libelants' Exhibit 10 received in evidence.)

Q. Would you state briefly to the Court how those records are kept and what they represent?

(Testimony of Frederick J. Harper.)

A. These records are made up during the progress of a job. They represent the material, the value of the material that has been withdrawn from a stock account which is maintained in the warehouse of the company at Winslow.

(Binding case of records marked Libelants' Exhibit 11 for Identification.)

The Court: Referring to Libelants' Exhibit 10, does that in any way concern Job Order 677?

The Witness: No, sir.

The Court: Have you heard mentioned here at this trial before you just at this moment mentioned it, Job Order 680?

The Witness: I do not recall it.

The Court: You did mention that as being covered by Libelants' Exhibit 10, did you not?

The Witness: Yes, I did.

The Court: And also you refer to Job Order 678 as being referred to in this Libelants' Exhibit 10, did you not?

The Witness: Yes, sir. [183]

The Court: State, if you know, what Libelants' Exhibit 11 is.

The Witness: It is a copy of the purchase order, copy of the invoice on purchases made by Commercial Ship Repair in connection with repairs to the Motor Tanker Urania.

Q. Referring to that exhibit, did that cover all of the direct purchases for all the work on the Urania? A. Yes, sir.

(Testimony of Frederick J. Harper.)

Q. To the best of your knowledge?

A. To the best of my knowledge, it does.

Q. Those records are kept under your supervision? A. Yes, they are.

Mr. Hokanson: I offer the same.

Mr. Howard: That covers both contract and extra work?

The Witness: Yes, sir.

Mr. Howard: It is not segregated in any way in that exhibit as you have it before you?

The Witness: Yes, it is segregated by hull numbers.

Mr. Howard: No objection.

The Court: Admitted.

(Libelants' Exhibit 11 received in evidence.)

Q. Referring to Libelants' Exhibit 4, do you know whether the item referred to on Exhibit 10 as 680 is included in the total amount of that additional work? A. I believe it is, yes.

Q. And 680 was just a separate designation for your internal records covering the additional work, is that correct? A. Yes, sir.

Q. Have you made an analysis of Exhibits 9, 10 and 11? A. I have.

(Cost schedule marked Libelants' Exhibit 12 for Identification.)

(Testimony of Frederick J. Harper.)

LIBELANTS' EXHIBIT 12

Schedule "C"

m o.	Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total	Sales	Profit or Loss
ll 677	8,522 [3]	15,307.49	4,352.56	7,980.90	9,860.30	37,501.25	41,655.00	
Plus costs accumulated under 678 properly applicable to Hull 677 per Schedule "B"	488 [5]	894.52	56.23	336.50	565.19	1,852.44		
	9,010 [8]	16,202.01	4,408.79	8,317.40	10,425.49	39,353.69	41,655.00	2,301.31
ll 678 and 680	9,976 [1]	17,956.67	2,603.24	8,873.12	11,543.19	40,976.22	45,111.46	
Less costs accumulated under Hull 678 properly applicable to Hull 677 per Schedule "B"	488 [5]	894.52	56.23	336.50	565.19	1,852.44		
	9,487 [6]	17,062.15	2,547.01	8,536.62	10,978.00	39,123.78	45,111.46	5,987.68
tal Cost Hulls 677, 678 nd 680	18,498 [4]	33,264.16	6,955.80	16,854.02	21,403.49	78,477.47	86,766.46	8,288.99

Note: Above costs do not include value of 2 sets of coils for Clayton boiler.

Admitted Apr. 8, 1949.

Libelants' Exhibit 12—(Continued)

Schedule "B"——Sheet 1 Only

Item No.		Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total
	Hull 678						
2		60 0	105.46	4.70	.....	69.42	179.58
15		77 5	139.60	8.95	.....	89.67	238.22
23		2 5	3.62	3.15	.....	2.89	9.66
25		77 0	137.20	2.20	153.45	89.09	381.94
31		20 0	37.92	1.07	.....	23.14	62.13
37		5 5	9.33	.....	.....	6.36	15.69
49		93 0	173.18	16.06	170.70	107.60	467.54
59		1 0	1.75	.....	.....	1.16	2.91
69		83 5	162.46	14.44	12.35	96.61	285.86
71		20 5	41.21	.11	.....	23.72	65.04
78		9 0	13.30	.53	.....	10.41	24.24
82		16 0	28.74	.....	.....	18.51	47.25
92		15 0	26.75	.....	.....	17.36	44.11
109		8 0	14.00	5.02	.....	9.25	28.27
		488 5	894.52	56.23	336.50	565.19	1,852.44

Above represents costs accumulated under Hull 678 properly applicable to Hull 677.

Libelants' Exhibit 12—(Continued)

Schedule "A"——Sheet 1

Item No.		Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
1	Hull 678	638 9	1,156.28	.....	.....	739.21	1,895.49
2	.....						
3	.....	53 0	98.77	53.15	55.00	61.32	268.24
4	.....	50 5	91.26	.....	.....	58.43	149.69
5	.....	8 0	14.00	11.26	.....	9.26	34.52
6	.....	1,545 6	2,746.71	304.61	1,369.72	1,788.26	6,209.30
7	.....	205 5	396.65	.....	.....	237.76	634.41
8	.....	10 0	18.00	4.67	2,338.34	11.57	2,372.58
9	.....	458 0	823.50	53.57	1,721.35	529.91	3,128.33
10	.....	992 4	1,782.73	138.67	106.60	1,148.21	3,176.21
11	.....	4 0	7.00	.....	42.05	4.63	53.68
12	.....	23 0	47.39	7.21	.....	26.61	81.21
13	.....	26 0	45.50	6.89	.....	30.08	82.47
14	.....	657 0	1,178.93	39.90	131.48	760.15	2,110.46
15	.....						
16	.....	74 0	133.34	9.75	.....	85.62	228.71
17	.....	57 0	105.55	10.08	.....	65.94	181.57
18	.....	72 0	118.68	4.78	.....	83.30	206.76
19	.....	42 5	75.98	12.06	.....	49.17	137.21

LIBELANTS EXHIBIT 12 (Continued)

Schedule "A"——Sheet 1

Item No.	"Urania"	Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
	Hull 678 (Continued)						
20		47 0	75.41			54.37	129.78
21					954.40		954.40
22		3 0	5.25			3.47	8.72
23							
24		194 3	355.83	7.14	127.93	224.81	715.71
25							
26		105 0	187.61	121.16	22.03	121.49	452.29
27		45 5	79.39	43.84	229.35	52.64	405.22
28		78 0	142.44			90.24	232.68
29		46 0	83.09			53.22	136.31
30		93 0	165.22	3.06		107.60	275.88
31							
32		5 0	8.65	2.76		5.78	17.19
33				1.96	16.10		18.06
34		8 0	14.00	4.50		9.26	27.76
35		143 5	256.85	39.84		166.03	462.72
36		2 0	4.30			2.31	6.61
37							
38		410 7	717.40	22.23	65.96	475.18	1,280.77
39		4 0	6.40	2.09	223.78	4.63	236.90

Schedule "A"——Sheet 1

Item No.		Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
	Hull 678 (Continued)						
40		32 0	54.80	4.37	.....	37.02	96.19
41		142 0	261.97	44.23	113.39	164.29	583.88
42		101 5	187.06	33.82	.....	117.43	338.31
43		20 7	58.80	22.62	.....	23.95	105.37
44		143 0	257.09	99.08	.....	165.45	521.62
45		188 5	340.50	40.32	.....	218.09	598.91
		6,730 1	12,102.33	11,496.62	7,517.48	7,786.69	28,556.12

Schedule "A"——Sheet 2

	Hull 678 (Continued)						
46		77 0	143.98	105.24	3.41	89.09	341.72
47		8 0	15.74	3.76	.....	9.25	28.75
48		201 0	368.63	33.94	121.35	232.56	756.48
49							
50		145 0	259.38	39.73	.....	167.76	466.87
51		156 5	273.79	28.80	.....	181.07	483.66
52		7 0	16.84	.....	4.00	8.10	28.94
53		149 0	264.00	17.25	.....	172.39	453.64
54		6 0	11.42	7.53	.....	6.94	25.89
55		19 0	33.90	2.95	.....	21.98	58.83
56		228 5	408.52	196.28	.....	264.37	869.17
57		154 5	276.49	56.78	.....	178.76	512.03

Libelants' Exhibit 12—(Continued)

Schedule "A"——Sheet 2

No. Item		Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
	Hull 678 (Continued)						
58		47 0	85.53	.....	.....	54.38	139.91
59							
60		21 5	37.82	.....	.....	25.88	63.70
61		16 0	28.32	.....	.....	18.51	46.83
62							
63							
64		45 5	77.60	.....	.....	52.64	130.24
65		131 5	238.38	25.77	49.00	152.14	465.29
66							
67		12 0	21.74	.86	133.10	13.88	169.58
68		26 0	45.00	2.25	.....	30.08	77.33
69							
70		45 5	87.82	35.02	.....	52.64	175.48
71							
72		24 0	44.09	3.35	15.96	27.76	91.16
73		30 0	51.16	20.12	16.00	34.71	121.99
74		11 0	21.17	.....	.....	12.73	33.90
75		33 0	60.41	.27	.....	38.18	98.86
76							
77		101 5	182.13	12.77	.....	117.43	312.33

Libelants' Exhibit 12—(Continued)

Schedule "A"——Sheet 2

Item No.		Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
	Hull 678 (Continued)						
78							
79		54 0	97.38	36.51		62.48	196.37
80		2 0	3.50			2.31	5.81
81		48 0	87.82	8.41	1.37	55.53	153.13
82							
83		2 0	3.50			2.31	5.81
84		19 5	36.15	7.23		22.56	65.94
85		128 5	229.54	24.77		148.68	402.99
86				21.13			21.13
87		87 0	141.02	5.75		100.65	247.42
88		24 0	45.68			27.76	73.44
89							
90		7 0	13.25		110.80	8.10	132.15
		8,798 1	15,814.03	1,846.09	7,972.47	10,180.30	35,812.89

Libelants' Exhibit 12—(Continued)

Schedule "A"——Sheet 3

Item No.		Labor Hours	Labor Amount	Stores Material	Direct Purchases Material	Overhead	Total Cost
	Hull 678 (Continued)						
91		78 0	138.67	509.66	6.12	90.24	744.69
92							
93		17 0	28.60	.46	107.00	19.67	155.73
94		2 0	3.50	.....	.....	2.31	5.81
95		35 0	63.91	.62	24.00	40.50	129.03
96		9 0	15.40	.....	.....	10.41	25.81
97		19 0	34.92	.....	.....	21.98	56.90
98		65 0	122.44	93.75	.....	75.20	291.39
99		8 0	15.00	12.33	5.25	9.25	41.83
100		32 0	61.20	37.90	.....	37.02	136.12
101		2 0	4.00	.....	10.75	2.31	17.06
102		12 0	24.00	.....	25.00	13.88	62.88
103		4 0	7.00	.....	28.00	4.62	39.62
104		2 0	3.50	.....	35.00	2.31	40.81
105		22 0	41.25	13.51	30.00	25.45	110.21
106							
107		74 0	124.62	13.69	.....	85.62	223.93
108		33 0	60.83	.....	.....	38.18	99.01
109							
110		30 5	53.99	16.14	.....	35.29	105.42
Unallocated		22 5	44.21	.....	72.58	26.03	142.82
	Hull 680	222 5	401.08	2.86	220.45	257.43	881.82
		9,487 6	17,062.15	2,547.01	8,536.62	10,978.00	39,123.78

(Testimony of Frederick J. Harper.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 12, if you know state what it is?

A. It is a schedule of the costs of repair on the Motor Tanker Urania. It is a recapitulation of costs from the records.

Q. What records?

A. The stores issues, the time sheets, materials, direct purchase.

Q. On No. 12, have you set forth the items of labor and material and overhead that you earlier mentioned with respect to 678 and 680?

A. Yes, I have.

Q. You are acquainted with the document which you [185] now hold which has been marked as No. 12? A. Yes.

Q. You know it reflects accurately the records which we have just been talking about, namely, Exhibits 9, 10 and 11? A. Yes.

Mr. Tokanson: I offer his analysis at this time.

Mr. Howard: No objection.

The Court: Libelants' Exhibit 12 is admitted.

(Libelants' Exhibit 12 received in evidence.)

Q. Referring to Exhibit 12, what does it show with respect to the total number of hours, man hours, on job order 678 and 680?

A. It shows a total of 9487.6 hours.

Q. Does the exhibit show the total amount of stores issued on Job Order 678 and 680?

A. Yes, it does.

(Testimony of Frederick J. Harper.)

Q. What is the total of that amount?

A. Stores material, $2547.01.

Q. When you mention stores, you mean direct issues from warehouse stock of Commercial Ship Repair? A. Yes, sir.

Q. Does you record show the total cost price of direct purchases furnished to Job Orders 678 and 680? [186] A. Yes.

Q. What is the total of that?

A. It shows $8536.62.

Q. Are there additional items of material shown by your record that went into Job Order 678 and 680, exclusive of what you have already testified to?

A. Yes. There were two sets of coils for the Clayton boiler which are not included in these costs.

Q. What is the reason for that?

A. The coils were contractor material, own material. They were not on our cost records. They were furnished to the vessel and have a value.

The Court: By whom were the coils furnished to the vessel.

The Witness: By the contractor.

The Court: Who is that?

The Witness: Commercial Ship Repair.

Q. State if you know what was the reasonable market value of the coils furnished to which you have testified in October, 1948?

A. The cost to Commercial Ship Repair would be approximately 12——

Mr. Howard: Just a minute. That is not responsive.

(Testimony of Frederick J. Harper.)

The Court: Sustained. It is a question of what the answer to the question was and is as of the date when the work was being done.

The Witness: Approximately $1250 each.

The Court: Each coil?

The Witness: Each coil.

The Court: Give the figure for the two of them.

The Witness: Approximately $2500.

Q. Two sets of coils were furnished?

A. I understand two sets of coils were furnished.

Q. Does your record show that? A. No.

Mr. Howard: The records speak for themselves.

The Court: The answer was no. The objection is overruled.

Q. Why do your records not show that?

A. My cost records do not show it. The invoices show it. The records, I presume, do show it.

Q. Because the coils were not purchased outside but were owned by Commercial Ship Repair, is that correct? A. That is correct.

Q. What price was charged for the two sets of coils to the Urania on Job Order 678?

A. The one set was furnished as a spare coil, and it was charged at $900. The other set was, as I understand, installed in the boiler and would be included in the billing [188] for the construction or repair of the boiler, whatever was done to it.

Q. And the price of the two sets of coils then is not included in the total amount that you have stated represents the direct purchases for the vessel on Job Orders 678 and 680?

(Testimony of Frederick J. Harper.)

A. It is not included.

The Court: Can you look at any exhibit now in evidence and see there any mention of these two sets of coils for the boiler?

The Witness: Yes.

The Court: Which one?

The Witness: On Libelants' Exhibit 6.

The Court: Why do you say these are extras not otherwise charged for?

The Witness: I mean they are not included in our cost figures which I have been giving you. They are included in the billing to the Motor Tanker Urania.

Q. Referring to Libelants' Exhibit 6, does it show one set of coils you have referred to?

A. Yes, it does.

Q. On what page?

A. It is on the last page, on page 5.

Q. What price is assigned? A. $900.

Q. Turning to Libelants' Exhibit 4, you have it before you, Job Order 678? A. Yes, I have it.

Q. Referring to item 14 listed thereon, is reference made to a set of heating coils in that item?

A. Yes, item 14, "furnish and install new heating coils."

The Court: That is in Exhibit 4?

The Witness: Yes, sir.

Q. Does your analysis show what the total billing was on both the main contract and the extras?

A. Yes. The total billing to Motor Tanker Urania was $86,766.46.

(Testimony of Frederick J. Harper.)

Q. Does your record show what the total profit to Commercial Ship Repair on that is?

A. It reflects a profit——

Mr. Howard: I object to that as immaterial, what the profit is.

The Court: What is your answer, if any, to the objection?

Mr. Hokanson: The answer is, Your Honor, that certainly there is some relationship between profit and the reasonableness of the charge. In view of the extensive records involved here and to shorten the evidence as much as possible, I would think testimony [190] as to profit would certainly be relevant as bearing upon the question of reasonableness without going into each item in detail.

Mr. Howard: There are other factors, if the Court please, that would enter into determination of profits, such as overhead, which this witness has not yet testified on.

The Court: The objection is overruled.

Read the question.

(Last question read by reporter.)

The Court: The answer should be yes or no.

The Witness: Yes.

The Court: Do you wish to ask another question, so that an objection may properly be stated?

Q. What is the amount of the profit?

Mr. Howard: I object to that in that the question is not specific, as to whether he is referring to the entire job or to the work under the extra items

(Testimony of Frederick J. Harper.)

covered by Exhibit 4 and the spares that come under Exhibit 6.

The Court: The objection is sustained. You may ask a clarifying question or questions.

Q. I have reference to the entire job. Does your record show what the profit is for main contract, extras and spare parts?

Mr. Howard: I object to that question relating to [191] the entire job. We have already had a stipulation as to the reasonableness on the contract work, the work totalling $41,655. Our inquiries here should relate to the extra work and the spare parts.

The Court: That is sustained. Confine your answer to the extras and the items over and above the original contract work.

Q. Does your record show what the profit is with respect to the extra work and the spare parts?

A. Yes.

Q. What is the amount thereof?

A. It shows a profit of $5987.68.

The Court: At this point we will take a noon recess until 1:30 this afternoon.

(At 12:01 o'clock p. m., Friday, April 8, 1949, proceedings recessed until 1:30 o'clock, p. m., Friday, April 8, 1949.)

April 8, 1949, 1:30 o'clock p. m.

Mr. Hokanson: Before resuming the interrogation of this witness, I should like to say on behalf of

(Testimony of Frederick J. Harper.)

libelants that there are certain foremen who have knowledge of the work done on the Urania who are presently engaged in important work at Winslow. Your Honor has expressed a desire to have it established in this proceeding what the competency and qualifications are of the personnel of Commercial Ship Repair to do this kind of work.

We are most anxious to satisfy the Court in that matter, but in the interest of expediting the trial, we propose to omit putting on in our case in chief these various people with the thought that perhaps on the cross libelant's case occasion will be had to put these persons on the witness stand and to develop from them what their qualifications are.

If the Court has any feeling one way or the other as to whether we have adequately established up to this point the competency of our personnel, counsel would be appreciative of an expression from the Court at this time so that we may make further arrangements [193] for testimony before resting.

The Court: I assure counsel that what the Court has said is not reflecting the Court's desire. It is merely to give counsel on both sides an opportunity to know of the Court's attitude as to one of the issues respecting the need of proof. If you feel content to submit the matter on that issue to the Court upon the present evidence, that is entirely within your discretion and the Court will not interfere with that.

All that I have said was to try to give both sides

(Testimony of Frederick J. Harper.)

notice of the fact that I consider that one of the material issues, and I thought the time I mentioned it was an appropriate time to go into it with the testimony. That was all I meant to indicate.

Mr. Hokanson: Thank you, Your Honor.

Q. From your experience as chief accountant at the Winslow yard, can you state how the profits shown on the extra work in this case compare to the profit on comparable jobs in comparable types of vessel at the Winslow yard?

A. I would say it compares very—it is a comparable profit. If anything, it is a very reasonable profit.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard: [194]

Q. Referring to this Exhibit 12, do you have that in front of you? A. No, sir, I do not.

Q. Was that prepared at the time you computed the amounts shown on the invoice for extras, being a portion of Libelants' Exhibit 5?

A. No, sir. That was the invoice on the spare parts.

Q. On the extras?

A. Was this prepared at that time?

Q. Yes. A. No, sir.

Q. When was Exhibit 12 prepared?

A. It was prepared during the last four or five days.

Q. Do you have with you now the documents

(Testimony of Frederick J. Harper.)

showing a breakdown of labor and material that was used in computing the charges for extra work shown in Libelants' Exhibit 5.

A. Any documents at that time—I don't recall that there were any. There probably were some working papers, weren't necessarily used in computing the prices on this invoice. The prices were negotiated.

Q. I will ask a question about that. Referring now to Libelants' Exhibit 4, will you tell us how the prices shown on that exhibit were determined, if you know?

A. They were determined by negotiation between the yard manager and Mr. Williams. [195]

Q. Referring now to item 1 on Libelants' Exhibit 4, the sum of $6704, does that in any way reflect the number of hours of labor or the quantity of material that was put into the ship under the work shown under item 1?

A. May I explain that the items one to three, etc., in the original work orders do not agree with items 1, 2, 3 and 4 here in numbering.

Q. I understand.

A. Item 1 of the original work orders, I don't recall what it called for.

Q. I will endeavor to restate it. My question was whether the amount of $6704 shown under item 1 in Libelants' Exhibit 4 truly reflects the value of the labor and materials shown as having been furnished under that item in the various elements of it as appearing on the first page of Exhibit 4?

(Testimony of Frederick J. Harper.)

A. Not knowing what items of labor and material went into this item 1, I cannot answer you.

Q. How did you compute that $6704?

A. I did not compute it.

Q. And that is true of the rest of the items in this exhibit? A. That is true.

Q. You didn't compute the amounts?

A. No. [196]

Q. Referring back again to Libelants' Exhibit 12, you have shown in that exhibit various amounts for overhead chargeable to particular items of the account. Will you tell me first how the total amount of the overhead for the Winslow yard of Commercial Ship Repair is determined?

A. It is determined by the amount of your payroll taxes, insurance, administrative expense, warehouse expense, and many other individual items that go to make up your total overhead.

Q. Do you know what your total monthly overhead was as carried in your books for the months of August, September or October 1948?

A. Yes.

Q. Will you please state what that figure was?

A. I do not know, offhand. I can determine what it is.

Q. Can you determine it presently, or——

A. No, I cannot.

Q. How long would it take you to get that figure?

A. I would have to look at the records to find out. They are at Winslow.

(Testimony of Frederick J. Harper.)

Q. As to the amounts shown as charged to overhead in particular items in Libelants' Exhibit 12, how are those amounts determined?

A. How is the amount of overhead that is distributed [197] to these jobs determined?

Q. Yes.

A. That is determined by taking our total overhead for the fiscal year during which this work was performed, dividing that total overhead by the number of direct labor hours during the year in which this work was performed, and arriving at a constant hourly overhead figure. That is then multiplied by the number of direct labor hours on this individual job, and on this individual job and all the others you allocate your overhead cost to your direct labor.

Q. Is it possible to determine what your monthly over-all overhead figure is for the year?

A. Not absolutely accurately. Some of your items lap over into other months. The only way to distribute your overhead is on a yearly basis.

Q. Having done that, you can break it down into months, can you not?

A. You can break it down into the jobs that were performed during those months by allocating it through direct labor.

Q. Suppose that you have only one ship in the yard over a period of a month. How much of your monthly overhead expense would be charged to that ship?

A. It would take its pro-ration of the total yearly

(Testimony of Frederick J. Harper.)

overhead cost. If you had one ship during that month and [198] and you had 150 ships during the year and they all had the same number of hours on them, it would take the same as the other 149.

Q. Can you state what your experience has been as to what percentage of the total cost on a job is represented by the overhead charged to that job?

A. Percentage-wise, it is a little bit hard for me to tell you. I can tell you that overhead costs run anywhere from $1.00 to $1.65. I have seen as high as $1.90 a direct labor hour.

Q. Can you give us any estimate on a percentage basis?

A. Not without doing some computation and figuring it out.

Q. In that overhead figure, how much salary of supervisory personnel is included?

A. Any salary of superintendents is included in your overhead costs. Salaries of foremen are a direct charge against the job on which they work.

Mr. Hokanson: I take it that the record will show that my objection registered before putting on Mr. Harper as my own witness goes to all the cross-examination as well?

The Court: Is there any objection to that arrangement?

Mr. Howard: No, Your Honor. I understand that is [199] continuing the objection.

The Court: The Court approves that arrangement and declares it effective.

(Testimony of Frederick J. Harper.)

Q. Is the overhead figure which you have used in computing Libelants' Exhibit 12 determined on the fiscal year involving the months August, September and October 1948? A. Yes, they are.

Q. What is your fiscal year at the yard?

A. It ends January 31.

Q. I note in your Exhibit 12 under the sheet dealing with extra labor, Job Order 678, an item of labor 9487.6 hours at a cost of that labor of $17,062.15. Can you state for us how the cost of that labor is computed? Is it on a certain fixed price, or does it vary as to——

A. The cost of that labor is computed in actual dollars and cents paid out to the men who performed those hours, who worked during those hours.

Q. I note also on Exhibit 12, under the same sheet dealing with extra labor, Job Order 678, an item of direct purchases in the amount of $8536.62. Can you state for us whether that includes the cost of spare parts furnished to the vessel and included under the separate invoice which has been offered and admitted as Libelants' Exhibit 6?

A. Yes, it does include the cost of spare parts.

Q. And those spare parts, according to Libelants' [200] Exhibit 6, were charged at the price of $6291.33?

A. May I amend my previous statement? It includes the cost of spare parts other than the Clayton spare coils.

Q. I note that the item of overhead under

(Testimony of Frederick J. Harper.)

Exhibit 12 on the sheet dealing with extra labor, Job Order 678, is in the amount of $10,978. Do you find that figure? A. Yes, sir.

Q. And for the same work, that is the extra labor, the extra work on the vessel, the labor charge was $17,062.15, is that correct?

A. Yes, sir, that is correct.

Q. Isn't that an unusually high amount of overhead to charge to a job of that size?

A. No, sir.

Q. Do you mean to say that on all of the work handled by your yard during this period a proportionate amount of overhead would be charged for the labor that is performed?

A. Exactly on the same basis that this overhead was distributed.

Q. Can you state for us what the ratio is between your labor cost and your overhead charge?

Mr. Hokanson: If the Court please, I think that is a matter of judicial notice on the figures stated.

The Court: The objection is overruled.

The Witness: May I hear the question again?

(Last question read by reporter.)

A. Do you mean the percentage ratio?

Q. Yes.

A. It cannot be accurately determined on your labor cost. It can be determined on your labor hours. Your labor cost varies. One man gets $1.60 an hour, some other man belongs to another craft and has a higher rate, $1.75 or $1.80, but if that man

(Testimony of Frederick J. Harper.)

works an hour, a certain ratio of overhead is allocated to that hour's work.

Q. You stated that you consider the profit as reflected in Libelants' Exhibit 12 being reasonable according to your experience on other jobs. Will you state for us what if any limitation is placed on the amount of overhead that may be charged on similar work performed for any agency of the United States Government?

A. There is no limitation on the amount of overhead, as long as it is actually incurred and is necessary for the operation of the company. During the war, overhead varied. It was even as high as $1.90 an hour, and it was allowable on Government work.

Q. As I understand, you had no document corresponding to Libelants' Exhibit 12 available for reference at the time you computed the figures shown on Libelants' Exhibits 4 and 5?

A. I did not have Libelants' Exhibit 12 [202]

Q. Did you have any similar or corresponding document?

A. We make a tentative breakdown as costs of our job as they actually run. It wouldn't be accurate, of necessity. The accounting follows the work. Costs that are incurred aren't all available, haven't been computed at the time that the work is completed.

Q. Have you ever furnished any such a document as Exhibit 12 to anyone representing the owners of the respondent vessel since the job was completed?

(Testimony of Frederick J. Harper.)

Mr. Hokanson: I object to that on the same grounds that all my previous objections have been made, and further that there is no showing here that any demand was ever made, or was there a necessity of making such a breakdown.

The Court: The objection is overruled.

A. No, I don't believe so.

Q. Then the number of hours of labor that went into these various items had not been determined finally at the time these invoices were prepared?

A. Not finally determined. We knew approximately the number of hours, but it hadn't been determined in the exact amount of hours that are on here.

Q. Did you preserve any computation that you made at that time as to the number of hours of labor that went into [203] these various items?

A. No, sir.

Mr. Howard: I have no further questions.

Redirect Examination

By Mr. Hokanson:

Q. The time cards which are identified as Libelants' Exhibit 9, are the records of the time on both the main contract and the extra work done on the Urania, are they not? A. Yes, sir.

Q. So that there has been a computation preserved of the time spent on repairs to the Urania?

A. That is true. It is not in the form of a recapitulation.

(Testimony of Frederick J. Harper.)

Q. Was any analysis such as Exhibit 12 ever requested of you by the owners of the Urania?

A. No, sir.

Q. Was one ever requested of you by Mr. Williams? A. No, sir.

Q. And is it customary in a negotiated price job to furnish such a breakdown? A. No.

Q. In your overhead item, what is the overhead per hour in the case of the Urania job?

A. In the case of all work performed, including the [204] Urania job, during the fiscal year of 1948, the rate per hour is $1.15.7.

Q. How does that compare with the hourly overhead rate that obtained during the war years?

A. It compares very favorably; in fact, as I have stated before, during the war years at times your overhead was a high as $1.90 an hour, approximately. I don't remember the exact figures.

Q. In computing your cost on all jobs, do you use the same system of overhead computation as you have in making up the analysis that is identified as Exhibit 12? A. Yes.

Q. Is that the customary way of doing it in shipyards?

A. It is customary at the end of the year to allocate your overhead to the jobs, yes. At the time that you compute a job, you don't know exactly what the overhead is: You can't allocate it at that time.

Mr. Hokanson: No further questions.

(Testimony of Frederick J. Harper.)

Recross-Examination

By Mr. Howard:

Q. Then the figure that you arrive at at the end of the job is just a guess as to how much overhead should be put into that figure?

A. You have a tentative idea from your past experience, [205] but it is not accurate.

Q. And these time cards in Exhibit 9 not only relate to the contract work and the extra work, but also have a record of time spent on other jobs entirely unrelated to the Urania?

A. Yes, they do.

Q. There is nothing in Exhibit 9 that segregates the time spent on the Urania, either on the contract or extra work, from the time spent on the entirely unrelated ones?

A. The time cards themselves show on which job order the work was performed.

Q. I am speaking of other than the individual time cards. There is nothing else in Exhibit 9 that attempts to segregate time on the Urania extra and contract work from entirely unrelated jobs?

A. It is segregated on the time card itself.

Q. Just on each individual time card?

A. Yes, sir.

Mr. Howard: I have no further questions.

Mr. Hokanson: That is all.

The Court: You may be excused.

(Witness excused.)

The Court: Call the next witness.

Mr. Hokanson: Mr. Sweetin. [206]

No. 12322

United States
Court of Appeals
For the Ninth Circuit.

COMPANIA NAVIERA LIMITADA, a Corporation, Claimant of the Motor Tanker "URANIA," Her Engines, Tackle, Apparel, Furniture and Equipment,

Appellant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, Co-partners doing business under the name and style of Commercial Ship Repair,

Appellee.

Apostles on Appeal
In Four Volumes
Volume II
(Pages 439 to 934)

Appeal from the United States District Court
Western District of Washington,
Northern Division.

FILED
JAN 4 - 1950
PAUL P. O'BRIEN,

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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JOSEPH L. SWEETIN

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. Will you state your name, please?

A. Joseph L. Sweetin.

Q. And your occupation?

A. Marine superintendent.

Q. Where are you employed?

A. Commercial Ship Repair, Winslow division.

Q. How long have you been so employed?

A. I have been in the Winslow division since about February 1. Previous to that, from August 1, 1948, to February 1, 1949, at Commercial Ship Repair, Seattle division.

Q. What is your experience in the ship repair business?

A. I have been directly connected with the ship repair business since August 1, 1948.

Q. Prior to that time, what was your experience?

A. Prior to that time, I was a surveyor for a period [207] of about one year, and prior to that time an operating manager, marine superintendent, port engineer of a commercial steamship company, and prior to that time chief engineer of seagoing vessels, and on down to my original experience. I first started to sea when I was 18 years old.

Q. What is your total years of experience with ships?

(Testimony of Joseph L. Sweetin.)

A. Total years of experience with ships, approximately 30.

Q. What licenses do you hold?

A. Chief engineer, ocean steam, any tonnage, any horsepower.

Q. Are you a member of any professional societies?

A. I am a member of the Society of Naval Architects and Marine Engineers; a charter member and past president of the Society of Port Engineers of Puget Sound.

Q. Did you go aboard the ex-Navy tanker YO 73 sometime in August, 1948? A. Yes, sir.

Q. When did you first visit that vessel?

A. I think it was about August 2nd or 3rd, 1948.

Q. Where was it lying then?

A. It was lying at Foss' Moorage in the canal, Lake Union.

Q. What was the purpose of your visit?

A. I was there as a representative of the Commercial [208] Ship Repair Company, who had received a call from General Steamship Company to send a representative on board the vessel to consult with Mr. Antippas relative to repairs expected to be accomplished on board the vessel.

Q. And the vessel you are referring to is the same as the Urania, subsequently named the Urania? A. That is true.

Q. Did you ever meet Mr. Antippas aboard the vessel?

(Testimony of Joseph L. Sweetin.)

A. I had met Mr. Antippas on board the vessel on the occasion of my first call there.

Q. Did you have any conversation with him at that time? A. Yes, I did.

Q. With respect to what?

A. With respect to the repairs that he was contemplating effecting on the vessel.

Q. Did you have any discussion relative to Mr. Harry Williams?

A. Yes. Mr. Harry Williams was mentioned during our conversation between Mr. Antippas and myself.

Q. What was said?

A. Mr. Antippas advised me that a Mr. Harry Williams was proceeding from New York to Seattle, who would be his representative during the period of repairs.

Q. Did you prepare specifications covering a bid by Commercial Ship Repair on that vessel? [209]

A. Yes, sir.

Q. Why?

A. Well, when I visited the ship on the first occasion, I went over the ship with Mr. Antippas. I was advised by Mr. Antippas that only certain items of an already prepared specification were to be accomplished at that time. He had a specification, and blueprints had already been made up concerning a rather comprehensive conversion.

Mr. Antippas advised me that he did not intend to effect the complete conversion of the vessel as

(Testimony of Joseph L. Sweetin.)

reflected in those specifications in the present instance, and he and I personally surveyed the vessel, wnt over the items that he did wish to accomplish.

After having surveyed the work, we did then refer to a copy of the specifications that Mr. Antippas had in hand, and took notes from it of the items that he wished performed. It seemed to me at the time that it was sort of an extraordinary way of——

Mr. Howard: Just a minute. I think what it seemed to the witness is not admissible at this time.

The Court: Sustained.

Q. Did you have a further statement to make concerning the preparation of those specifications?

The Court: I think you should ask him a specific question. It is liable to call forth the very answer that has just been objected to. You had better confine his thinking.

Q. You did prepare specifications?

A. Yes, I did prepare specifications covering the extra work that Mr. Antippas stipulated he wished to have performed.

Q. Do you know whether a bid was made on those specifications by Commercial Ship Repair?

A. Yes. I helped work the bid up.

Q. Did you after your first meeting with Mr. Antippas meet him again? A. Yes.

Q. When was the next occasion?

A. I believe I saw Mr. Antippas just momentarily a couple of days after the first instance, and again at the opening of the bids.

(Testimony of Joseph L. Sweetin.)

Q. And did you thereafter see him at Mr. Black's office?

A. That same day the bids were opened.

Q. Who was then present?

A. Mr. Black, Mr. Finn, myself, Mr. Antippas, Mr. Harry Williams, the captain of the vessel.

Q. Were any discussions had at that time concerning Mr. Williams?

A. Mr. Williams was present at that time. [211]

Q. Was there any discussion with respect to his function concerning the repairs to the Urania?

A. Yes. He was—Mr. Antippas had stated that he was to be the repair representative of the owner during the repairing period on the Urania, that he was expected to stay there and see that the repairs were performed.

Q. Was anything further said concerning the extent of Mr. Williams' authority?

A. Not directly to me, sir.

Q. In your presence?

A. Yes, in my presence.

Q. Do you recall what was said and by whom?

A. As far as Mr. Williams' status was concerned, it was stated that he was to be the direct representative of the owner, and that he would be there during the period of the repairs and would have authority to act for the owner.

Mr. Howard: "It was stated"—I don't understand who stated that.

The Witness: Mr. Antippas stated that. Mr. Antippas was the owner.

(Testimony of Joseph L. Sweetin.)

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. That was the extent of the information that you [212] heard given, the instructions that you heard given by Mr. Antippas as to the authority of Mr. Williams?

A. Yes, sir. Mr. Williams—I mean Mr. Antippas was not in direct conversation with me. He was in conversation with Mr. Black.

Q. In other words, it all boiled down to the fact, did it not, that Mr. Williams was to be out here during the progress of the work to see that it was performed?

A. How was that again? I don't know about it all boiling down to that. It was a fact he was to be here during the period of the repairs to see that they were performed.

Mr. Howard: That is all.

Redirect Examination

By Mr. Hokanson:

Q. When you say it all boiled down to his being there, do you have any further understanding of what is contemplated by that answer?

A. I didn't say that. I objected to that point, that it all boiled down to that. I don't use that language.

Q. What was the extent of Mr. Williams' authority, as you understood it from the conversation had at that time?

(Testimony of Joseph L. Sweetin.)

A. With my past experience to draw from, it was my understanding that Mr. Williams was to be the direct [213] representative of the owner, would have full supervision of all repairs to be made on that vessel and have full authority as representative of the owner to order additional repairs if he so desired, and to settle prices on all such repairs if they were ordered.

Mr. Hokanson: That is all.

Recross-Examination

By Mr. Howard:

Q. And that last statement is based on your past experience? A. On my past experience.

Q. Rather than what was said on that occasion?

A. That was my understanding of the general terms of the conversation as held that day in the office.

Mr. Howard: No further questions.

Mr. Hokanson: That is all.

The Court: You may be excused.

(Witness excused.)

The Court: Call the next witness.

Mr. Hokanson: Mr. Finn. [214]

FRED A. FINN

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name. A. Fred A. Finn.

Q. Where do you live?

A. San Francisco, California.

Q. What is your occupation?

A. I am general superintendent of Commercial Ship Repair, Inc.

Q. With offices where?

A. Offices at San Francisco, California.

Q. What is your experience in ship repair work?

A. 1941, '42 and '43, I was in repair work with the Alaska Steamship Company; and 1944, I believe, and 1945 and a part of 1946 was at Winslow Marine Railway, and since that time I have been employed by Commercial Ship Repair.

Q. In what capacity were you employed by the Winslow Marine Railway?

A. As a machinist foreman. [215]

Q. Prior to that time, you were employed by Alaska Steamship Company?

A. Alaska Steamship Company.

Q. In what capacity?

A. As machinist lead man.

Q. What experience have you had at sea?

A. I have had about 15 years at sea.

Q. In what capacity?

(Testimony of Fred A. Finn.)

A. All the way from wiper to chief engineer.

Q. How long were you a chief engineer?

A. Approximately one year, active.

Q. Do you hold a chief engineer's license?

A. I do.

Q. How long have you held it?

A. Since 1942.

Q. Did you go aboard the YO 73 in Seattle, Washington, in the early part of August 1948?

A. I did.

Q. What was the occasion for that?

A. I went to make a survey in preparation for a bid.

Q. At whose request?

A. I went out there at the request of the General Steamship Company.

Q. In what condition did you find the vessel to be at that time? [216]

A. Very poor condition, outwardly.

Q. What was contemplated by the survey?

A. Well, I surveyed the vessel for the specific reason to determine somewhat the cost of labor and material it would require to do certain work on the vessel.

Q. And did you consult with anyone aboard the vessel when you made that visit?

A. At the time I made the visit to the vessel, Mr. Sweetin and I were together.

Q. Were specifications made up to your knowledge by Commercial Ship Repair covering a prospective bid? A. There was.

(Testimony of Fred A. Finn.)

Q. Do you know whether a bid was made covering those specifications? A. There was.

Q. Were you in Mr. Black's office on or about August 4, 1948 in the presence of Mr. Demetri Antippas and Mr. Williams, Mr. Sweetin and the master of the vessel? A. I was.

Q. Do you recall any conversations concerning Mr. Williams on that occasion? A. I do.

Q. Specifically, what were those conversations about?

A. Generally, it was stated by Mr. Antippas that Mr. Williams would be a direct representative here while the [217] vessel was undergoing repairs.

Q. Was there any discussion with respect to additional work on the vessel?

A. Yes. It was stated at that time by Mr. Antippas that Mr. Williams would be his direct representative and would have charge and authority to make any additional work.

Mr. Howard: To make any additional work?

The Witness: Yes, to give out any additional work as it was required.

Mr. Hokanson: You may examine.

Cross-Examination

By Mr. Howard:

Q. Mr. Finn, was anything said at that time by Mr. Antippas as to the approval of accounts?

A. I didn't understand you.

Q. Was anything said by Mr. Antippas at the

(Testimony of Fred A. Finn.)

time of this conference in Mr. Black's office on August 4 as to approval of accounts?

A. I don't quite get what you mean by that question, sir.

Q. At the time this conference was held in Mr. Black's office on August 4, do you recall whether Mr. Antippas made any statement as to the authority of Mr. Williams to approve accounts for work performed? [218]

A. Yes, I understood it that way, what he said.

Q. Did he so state?

A. He said Mr. Williams would have full authority to act for him.

Q. Was anything said at that time about progress payments being required?

A. Not that I recall.

Q. Were you present at Winslow during the progress of this work?

A. Part of the time only.

Q. Did you participate in the drafting of the specifications that were used in making the bid for this work? A. Partly, yes.

Mr. Howard: I have no further questions.

Mr. Hokanson: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call libelants' next witness.

Mr. Hokanson: With the Court's permission, Mr. White has a witness and will now examine him.

The Court: You may proceed. [219]

CARL J. NORDSTROM

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. White:

Q. State your name, please.

A. Carl J. Nordstrom.

Q. What is your residence? A. Seattle.

Q. What is your occupation?

A. Consulting naval architect and engineer.

Q. Where are your offices?

A. 905 Second Avenue. Seattle.

Q. Would you outline briefly to the Court your background in marine work?

A. I have been in the shipbuilding and naval architecture side of it for a matter of about 33 years. The early part of my experience was gained in shipbuilding and ship repair plants, and the last 20 years, approximately, have been in professional practice on my own, except four and a half years that I was in the Navy during the late war.

Mr. Howard: If the Court please, we will concede [220] that Mr. Nordstrom is recognized as a qualified, competent and experienced marine architect in this area, if that will limit the interrogation.

Mr. White: I believe the Court should know something about his qualifications.

The Court: He has appeared as a witness many times in court. I have heard his testimony before relating to his qualifications, unless you feel, how-

(Testimony of Carl J. Nordstrom.)

ever, that this record should have in it a statement of his qualifications. I am sure that in view of the stipulation the Court recognizes that he is a qualified consulting architect and engineer.

Mr. White: I will confine it to one question, so that the record may show it.

Q. What duties did you have during the last war?

A. Most of the time, I was planning officer in an organization called the Assistant Industrial Manager's Office, with headquarters here in Seattle, and as such I directed all of the ship repair and conversion operations of the Navy in the Thirteenth Naval District, that is, all such work that was carried on outside the Navy Yard itself.

Q. From your experience, are you acquainted with proper ship yard accounting procedures?

A. Reasonably so.

Q. Were you present in court to hear Mr. Harper, a [221] previous witness, testify as to accounting procedures of Commercial Ship Repair yard?

A. I was.

Q. Would your experience bear out Mr. Harper, or vice versa, as to the accounting practice used?

Mr. Howard: I object to the form of that question, it being so general. It would afford the witness an opportunity to make a——

The Court: Pick out some part of the testimony and relate it as a supposititious question, supposing that such and such were the testimony in the case,

(Testimony of Carl J. Nordstrom.)

or testimony tending to establish so and so, and ask his opinion.

Q. Mr. Harper testified, I believe, as to the manner in which cost was reckoned on a job known as the Urania at Commercial Ship Repair yard. Would his testimony in that respect—does it agree with your experience as to the proper accounting procedures to be followed in reckoning costs in a ship repair yard?

Mr. Howard: Same objection. It is so general, if the Court please, that I don't believe it is a proper question to ask of an expert witness at this time in the manner in which it has been propounded.

The Court: I think the record as to this specific question should show what the conditions are submitted [222] to this witness for his reaction and opinion.

Mr. White: Your Honor, it is my opinion that if any specific matter is to be gone into, it can be gone into on cross-examination. I do not wish to extend the record by asking him about each practice.

The Court: I believe the Court should, and the Court does, sustain the objection.

Q. Assuming a conversion job of a Navy YOG into a tanker for commercial trade, would $1.15.7 per hour be high or low as overhead per hour on direct labor in reckoning the cost?

Mr. Howard: I object to that unless it is further established as to what the area is in which the work is being performed, and also on the ground that

(Testimony of Carl J. Nordstrom.)

counsel has identified this as a YOG, and it is not a YOG.

The Court: Is there any evidence now or expected to be in the record that it is that kind of a vessel?

Mr. White: It is a YO, I am informed, Your Honor.

The Court: Eliminating the "G", is that what you are now doing?

Mr. White: Yes, Your Honor.

The Court: Restate your question.

Q. Speaking of the Puget Sound area, I will ask you whether $1.15.7 per man hour is a reasonable or unreasonable overhead on direct labor in a job of conversion of a former [223] YO oiler?

Mr. Howard: I am sorry to keep objecting, but he hasn't got any time in here, whether it is this year or during the war when Mr. Nordstrom was in the business of supervising this work, or when it was.

The Court: Specify the time.

Q. During the period of 1948, Mr. Nordstrom?

A. I assume I am free to answer?

The Court: You may answer that.

A. The overhead figure that you gave there—what was it?

Q. $1.15.7.

A. $1.15.7 an hour is not an unusual overhead figure. You will find overhead costs of that magnitude appearing in job after job. They vary up and down.

(Testimony of Carl J. Nordstrom.)

Q. With respect to the ship repair business, is it a stable business or a speculative business?

A. It is quite unstable as to work load. I would call the ship building and ship repair business both highly speculative businesses, in which the work load is quite unpredictable.

Q. Assuming a job on which the original work contract would be $41,655; assuming further that further additional work was ordered in that total sum of roughly $45,000; assuming further that 9487 man hours went into the extra [224] work, the additional work; and assuming this area, the Puget Sound area; and assuming the time to be the latter part of 1948, the months between August and October; would you consider a profit to the repair yard of $5987.68 to be a reasonable profit?

Mr. Howard: If I understand this question correctly, if the Court please, he assumes both contract and extra work and totals on that, and then he asks a question as to whether he considers the amount of $5987 to be a reasonable amount of profit. As I have read Exhibit 12, that is not the fact that is shown by that exhibit. As I read Exhibit 12, there is a total of $8288 of profit on both contract and extra work, so I think this question which is being propounded to this witness assumes matters that have not been testified to in this case.

I have one further objection to the question as propounded to the witness. This witness has stated that he was experienced in this type of work by

(Testimony of Carl J. Nordstrom.)

reason of having acted as assistant industrial manager in the Thirteenth Naval District in directing ship repair work during the war, but he has not testified that he has continued with his contact with ship repair work so as to be able to state what the fact may be as to conditions existing in 1948.

Mr. White: Your Honor, may I respond?

The Court: You may.

Mr. White: Mr. Howard lodged an objection to the question, which objection was sustained, as to the profit on the entire job. I believe it only fair and proper in my hypothetical question to this expert witness to give the background of the original contract. I am not asking the witness what would be a reasonable profit on the entire contract, but merely on the additional work, considering the original contract price, because that is a factor which should be brought to the attention of the expert witness, in my opinion.

Mr. Howard: I submit to Your Honor that the original contract has no bearing on what profit might be reasonable as to the extra work. The profit on the original contract is separately stated in Exhibit 12, and I think it is taking unfair advantage of the witness and of our principals to call that to his attention and then ask him to express an opinion as to the reasonableness of a profit on the extra work and not bring in the contract.

The Court: In respect to the profits doing the extra work, the Court is not aware of any proof

(Testimony of Carl J. Nordstrom.)

that the amount of such profit was affected by the circumstance that there was an agreed contract originally entered into.

Mr. White: May I establish the fact through this witness, that it would affect the amount of reasonable profit on extra work if there were an original contract?

The Court: I will hear further testimony that you think relates to the subject.

Q. Is there a bearing between the amount of what would be a reasonable profit on additional work, or on a work order—would that bear upon whether there had previously been work ordered in an original contract in a ship repair yard under conditions which I have previously described?

A. If I understand your question correctly, I would say that there wouldn't be any particular bearing as to work that had gone before as to this particular job. The relationship of one to the other is more or less independent.

Q. Reframing my previous hypothetical question to you, merely assuming work ordered of the amount of roughly $45,000, which work was for the alteration, renewal and repair of a Navy YO; and assuming the conditions as I have described them to you, namely, this area and the period of time, the latter part of August, 1948; and assuming further that 9487 or thereabouts man hours went into the additional work or the work I have described; what percentage of profit [227] would be in your estimate reasonable?

(Testimony of Carl J. Nordstrom.)

Mr. Howard: I object to this question on the ground that the first part of it assumes a figure of $45,000, and I don't recall that that figure is the total involved in either contract work or the extras.

I further object to the question, renew my objection on the ground that this witness has not stated that he has a continuing knowledge of the overhead figures and reasonable amount of overhead allowance since he left the particular work that he was engaged in during the work, directing ship repair activity in the Thirteenth Naval District.

Mr. White: It would be a very simple matter.

Q. Have you had a continuing knowledge of ship repair work in this area?

A. I have. We are handling that sort of work all the time in our office.

The Court: Were you having that kind of work in August, September, October 1948?

The Witness: Yes, Your Honor.

The Court: The Court sustains the rest of the objection, that relating to the forty-odd thousand dollars, unless it is established by the evidence that that was the amount of the repairs extra over and above the original contract. [228]

Mr. White: Your Honor, according to my computation here, the exact figure is $45,111.46.

The Court: For what?

Mr. White: On this extra work and spare parts; in other words, the billing outside of the total contract.

(Testimony of Carl J. Nordstrom.)

The Court: What exhibit do you contend reflects that figure?

Mr. White: Exhibits 5 and 6, Your Honor.

The Court: Will you call the page and item to the attention of Mr. Howard? In that connection, I ask Mr. Howard if he has copies of these exhibits?

Mr. Howard: Yes, I do, Your Honor.

The Court: Refer to the page and item where you claim these figures are reflected in these exhibits.

Mr. White: Your Honor, referring to Libelants' Exhibit 6, the last page thereof; without reckoning the sales tax the total appears $6920.46. Referring to Libelants' Exhibit 4, the last page thereof, the total for what has been denominated additional work is $38,191. If those two figures on those two exhibits are totalled, we get a sum total, if my arithmetic is correct, of $45,111.46, which was the figure I was speaking of when I said roughly $45,000, since it was so close. [229]

Mr. Howard: If the Court please, I will renew my objection on the ground that counsel is now bringing into this hypothetical question the item of spare parts under Exhibit 6 in the sum of $6920, and that by the very terms of the invoice on spare parts, aside from the fact that he eliminated it from the question, the terms of the invoice show that that figure they are using includes a 10 per cent handling charge.

Mr. White: Your Honor, with respect to Mr. Howard's argument, I believe that the questions

(Testimony of Carl J. Nordstrom.)

which he asked Mr. Harper concerning Libelants' Exhibit 12 were roughly the same as the question which I am asking this witness, and I believe that in his questioning of Mr. Harper he included—he wanted to know outside of the original contract what the profit was. That is all I seek to establish.

The Court: The objection is overruled.

The Witness: May I hear the question again?

(Question read by reporter as follows):

> "Q. Reframing my previous hypothetical question to you, merely assuming work ordered of the amount of roughly $45,000, which work was for the alteration, renewal and repair of a Navy YO; and assuming the conditions as I have described them to you, namely, this area and the period of time, the latter part of [230] August 1948; and assuming further that 9487 or thereabouts man hours went into the additional work or the work I have described; what percentage of profit would be in your estimate reasonable?")

The Witness: I would estimate 20 to 25 per cent rate of profit on that as being a reasonable profit rate.

Mr. White: Your witness.

Cross-Examination

By Mr. Howard:

Q. Mr. Nordstrom, this allowance per man hour for overhead at a certain time would vary from yard to yard, would it not?

(Testimony of Carl J. Nordstrom.)

A. It would also vary in the same yard from time to time.

Q. I was gong to ask you that next. It would vary from area to area?

A. That is right, vary with conditions.

Q. But in Seattle, in the Puget Sound area, it would vary from yard to yard, wouldn't it?

A. It would also vary in an individual plant in this area, because it is a relation between work load and plant capacity.

Q. Do you have an independent recollection of what [231] conditions were that might affect the overhead figure during the months of August, September, October 1948?

A. I don't think the month of the year has anything to do with it. It is a matter of the work load in the particular plant.

Q. Do you have personal knowledge of the conditions existing as to work load in the Commercial Ship Repair yard at Winslow during the months I have mentioned?

A. I haven't any definite recollection of that.

Q. If there were six ships in the yard, the percentage of overhead carried by any particular job would be much less than if there was only one ship in the yard, wouldn't it?

A. I wouldn't use the term "much," I would say it would probably be less. It depends on the amount of work on it.

Q. During the time you were acting for the Navy Department, is that correct?

(Testimony of Carl J. Nordstrom.)

A. That is right.

Q. During the war, will you tell us whether it was considered appropriate to allow a 20 to 25 per cent profit on a job of the type described in Mr. White's question to you?

A. We handled those matters in an entirely different manner. We had a contract such as no one else could have, [232] a time and material contract based on a standard billing rate in which each yard had a straight figure of so much per man hour, and that was the technical term, a composite billing rate.

Q. That billing rate—can you give us any idea of what allowance for profit was provided for in that?

A. I don't recall just what it was. That was a different situation again in which we had a rather full work load, and all yards going on practically 100 per cent all the time. It wasn't at all comparable to peace time conditions or competitive conditions.

Q. Do you know what the conditions are as far as the awarding of Government work in 1948?

A. I am not handling Government work in that manner.

Q. In the question that Mr. White propounded to you, he assumed that certain work and materials were furnished. Would your answer to that question be varied at all if it was brought to your attention that included in the figure of $45,000 was an item of $6921 for spare parts furnished to the

(Testimony of Carl J. Nordstrom.)

vessel by the repair yard upon which the repair yard billed the shipowner a handling charge of 10 per cent, making a total charge exclusive of sales tax of $6920?

A. I don't think that would make a great deal of difference to me, because the assumption of 20 to 25 per cent profit rate per job is based on the fact that it is [233] a high risk involved operation. Ship repair is a feast today and a famine tomorrow. When you say 20 to 25 per cent profit on a job today, that doesn't mean your annual report is going to show a profit at all. It may mean the difference between survival, remaining in business, and not having earned enough on the work you did.

Q. It is customary, I assume, for yards furnishing spare parts to add a handling charge?

A. The handling charge of 10 per cent is usually added to all items of purchases, store items, whether purchased for spare parts or use in the job, or anything of that sort, for the simple reason that something has to be allowed to the ship yard for the expense of bookkeeping and keeping track of accounts, checking it in and handing out the stores, etc.

Q. That is their overhead item?

A. That is their overhead item, and it is usually chargeable to stores.

Q. I can't quite follow you.

A. That is an overhead item, but it is directly charged to purchases and store items and it not

(Testimony of Carl J. Nordstrom.)

figured in the overhead that is charged against direct labor in the plants I have seen.

Q. In this over-all figure of $45,000, you were assuming that that was for labor and materials furnished [234] upon which no handling charge was——

A. I was assuming that that was the whole job, the cost of the job. Normally you will take and add to the cost of the job when it is all fixed up a profit item on it, that you are legitimately entitled to, and which normally you have to have if you are going to remain in business.

Q. But the handling charge of 10 per cent is actually an allowance for the yard's overhead, isn't it?

A. It is an overhead item, as a rule.

Q. Going back to the question, the other accounts for extra work, material and labor furnished on extra work over and above the contract, would have a separate charge for overhead, would it not?

A. I don't know. It depends on how they were handled. Very often your extra items are agreed upon. They want to do some extra piece of work, "how much is that worth," and it will be a particular charge, estimate say $500 to do that. It may cost $200 and it may cost $700.

Q. Can you state for us what your recollection is as to the condition of the ship repair business in August, September, October, 1948, in this area as to whether it was stable or unstable? I am re-

(Testimony of Carl J. Nordstrom.)

ferring to those months August, September and October, 1948.

A. My recollection, it wasn't a very stable business [235] in those months. It was on the downgrade. It has been on the downgrade for the last two years. You will find an occasional yard that has a spurt of work. There are yards in Seattle today that have a large amount of work on hand. Other yards are shut down.

Mr. Howard: No further questions.

Mr. White: I believe that is all.

The Court: You may step down.

(Witness excused.)

The Court: Call libelants' next witness.

Mr. Hokanson: Mr. Storrs.

RICHARD C. STORRS

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name, please.

A. Richard C. Storrs.

Q. What is your residence?

A. Seattle, Washington.

Q. And your occupation? [236]

A. Port engineer.

Q. For what company?

A. American Mail Line.

(Testimony of Richard C. Storrs.)

Q. How long have you held that job?

A. Four years and three months.

Q. What is your experience behind that period relating to maritime matters?

A. The 26th day of May of this year, it will be a total of 35 years.

Q. In your capacity as port engineer, what are your duties?

A. Supervision of repair work and negotiating prices with the different ship repair yards, and the preparation of work orders on which bids are submitted.

Q. Do you hold any marine licenses?

A. I have a chief engineer unlimited ocean license.

Q. For how long have you held that license?

A. 23 years.

Q. Do you belong to any professional societies?

A. The Puget Sound Society of Port Engineers.

Q. In your experience as port engineer in negotiating prices with ship repair yards, do you take into account or request a breakdown of time and material on the particular job?

A. I would like to answer that question in my own [237] words and give a direct answer to the question. In my over-all experience as port engineer for the American Mail Line, I feel I am conservative in making the statement that approximately one-third of the total price of any job is conducted on a negotiated price basis, and I do not take into consideration the length of time, the number of

(Testimony of Richard C. Storrs.)

men or the overhead or any other hidden charges in the price which is quoted to me.

I have had enough experience, I hope, that I can size up the job and when the representative of a repair yard tells me that he will do it for $250, I will agree to that sum of $250 or I will tell him, "You are way too high and you have got to come down to earth and give me a fair price," which means that in my mind before I have even asked him for a quotation I have in my mind formed a definite opinion of what that work will cost.

Q. Is it customary for surveyors representing owners to negotiate prices?

A. A surveyor representing an owner to negotiate prices, definitely, yes.

Q. You have authority, do you, as port engineer to negotiate prices for American Mail Line on ship repair work? A. Absolutely, yes.

Q. You have heard the testimony of Mr. Nordstrom with respect to the kind of job that was involved here on [238] extra or additional work, is that correct?

A. I must admit that I heard it, but he didn't speak very loud and I am slightly deaf in my right ear, and I have to admit that I did not follow him very closely.

Q. You are acquainted with the margin of profit that prevails in ship repair work which is of a conversion and alteration character?

Mr. Howard: Objected to as leading.

(Testimony of Richard C. Storrs.)

The Court: Avoid leading. The objection is sustained.

Q. Assuming a contract for the repair, alteration and renewal of an ex-Navy yard oiler; and assuming that this occurred during the month of August 1948 in the Puget Sound area; assuming that that contract contemplated extra work which would be developed as the specifications on the main contract were fulfilled; and assuming that in the course of the repairs and alterations additional work involving a total of 9487 man hours was involved; and assuming further that materials issued in the form of stores totalling $2547 were involved; and assuming further that direct purchases were made that went into the job totalling $8536.62; and assuming further that you have a total overhead cost on the extra work amounting to, in terms of hourly rate, $1.15.7 per hour, or $10,978 altogether; and assuming further that after the work was completed and after a breakdown of hours, [239] labor and material the total profit amounted to $5987.68; assuming further that that profit is based upon a total price of $38,191 for the actual extra work and $6920.46 for the purchase of spare parts furnished to the vessel; in your opinion, based upon your experience, would you say that the profit here involved is reasonable or unreasonable?

Mr. Howard: If the Court please, I am going to object to this question that has been propounded to the witness on the ground and for the reason that this man has testified that for the last four

(Testimony of Richard C. Storrs.)

years and three months he has been port engineer for the American Mail Line, almost invariably it has been his practice to negotiate work of this type on a price basis by negotiation with the ship yard without requiring or consulting any breakdown of labor and materials.

I state to the Court that this witness has not qualified himself to render any opinion as to the reasonableness of a profit item based upon the factors of cost of labor and the number of hours, labor hours, and the amount of material furnished and the overhead charge that counsel has put in this question, reminding the Court again that this witness has stated that almost invariably they negotiate contracts on a price basis with the yard without requiring such figures.

The Court: The Court will temporarily sustain the [240] objection, with leave to inquire of this witness as to whether he has any experience in determining reasonable profits in these repair bills.

Q. Have you had any experience in this area as port engineer with respect to the negotiation of prices involving a breakdown of time, labor and material?

A. Since May 1 of 1945, I have cataloged and indexed prices for repair work of the different repair yards which are in existence in Seattle at the present time, the Puget Sound area at the present time, and also those which have gone out of business. That is an alphabetical index.

Mr. Howard: I am going to object to so much

(Testimony of Richard C. Storrs.)

of the answer as has so far been given, and move it be stricken as not responsive to the question.

Mr. Hokanson: I believe the witness' answer so far is preliminary as to his qualifications.

The Court: If it is preliminary, it may stand; otherwise, it will be stricken. Try to answer the question directly.

Q. Is it preliminary?

A. It was in this manner preliminary, to the fact that I am here without solicitation and have no personal interest in it.

Mr. Howard: I move that part of the answer be stricken. [241]

The Court: The objection is sustained. The answer of the witness so far made will be stricken and the Court will disregard it.

Have in mind the specific question.

Read the question.

(Last question read by reporter.)

The Court: Answer yes or no.

The Witness: Yes.

Q. Are you now able to answer my previous question involving——

The Court: I think you should ask him if he has had any experience in consideration of what are reasonable margins of profit on these contracts for repair with which he has had dealings.

Q. May the Court's question be answered?

A. My answer to that is no.

Q. Do you know what a reasonable percentage

(Testimony of Richard C. Storrs.)

of profit would be on the type of job that I have described to you earlier?

A. That is an awfully hard question to answer.

Q. Do you have any opinion on it?

A. Yes, I have a definite opinion.

Q. Would you say that 20 per cent was excessive?

Mr. Howard: I object to that as leading.

The Court: Sustained. The witness has not shown [242] qualifications to answer the question.

Q. In your experience in negotiating prices, do you have occasion to break down the job after the price is negotiated to determine what the margin of profit may have been in any particular job?

A. No.

Q. Do you have any personal knowledge of what the margin of profit is to the ship yard in any of the repair work that you negotiate?

Mr. Howard: That is objected to as immaterial and irrelevant on any job he has negotiated, the margin of profit there, unless it is connected in with what we are talking about here. It would have no bearing.

The Court: The objection is overruled. I understand he is trying to qualify the witness.

A. Yes.

Q. Is there any constant on that margin, or does it vary depending upon the nature of the work?

A. I would say that 25 per cent profit on a job——

(Testimony of Richard C. Storrs.)

Mr. Howard: I object to the answer as not being responsive to the question.

The Court: The objection is sustained. I think in view of all the witness' testimony he is not qualified. It seems to me you are wasting your time with this witness. You should be calling another [243] witness.

Mr. Hokanson: I have no further questions.

Mr. Howard: No questions.

The Court: You may step down.

(Witness excused.)

Mr. Hokanson: May I reserve the right to recall this witness in the event rebuttal indicates that his testimony is required?

The Court: Of course the Court will not at this time deprive you of the right to introduce rebuttal testimony that is pertinent, including the recalling of some witness who has already been on the stand.

At this time we will take a recess of ten minutes.

(Recess.)

Mr. Hokanson: Call Mr. Lillehei.

OLE LILLEHEI

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name, please. [244]

A. Ole Lillehei.

(Testimony of Ole Lillehei.)

Q. Where do you live?

A. Winslow, Washington.

Q. What is your occupation?

A. General superintendent, Commercial Ship Repair, the Seattle division.

Q. Would you describe your background and experience in maritime matters?

A. I served my apprenticeship at Puget Sound Navy Yard, starting the 2nd day of February, 1918, and completed February 2, 1922. I went to sea for a year and a half. I was leading man machinist until 1928. I went back to Bremerton Navy Yard as machinist, and 1929 I was leading man machinist. In 1933, I went to the planning and estimating section, which I stayed until 1938.

In 1938, I was senior planner and estimater in EIM's office, Thirteenth Naval District. From there I went to Winslow Marine Railway in 1940 as machinery superintendent. In 1942, I was assistant general superintendent until 1945. I took the general superintendent's job at Pacific Electrical and Mechanical, for I think it was about a year or a year and a half, and then I went to work at Commercial Ship Repair, which I have been ever since.

The Court: Repeating, for what concern did you work from 1942 to 1945? In what capacity? [245]

The Witness: Assistant general superintendent.

The Court: With what concern?

The Witness: Winslow Marine Railway & Shipbuilding Company, in charge of outfitting.

Q. What does outfitting mean?

(Testimony of Ole Lillehei.)

A. We built minesweepers for the United States Navy. Outfitting is the installation of pipe and electrical machinery and complete outfitting of the vessel, ready for sea.

Q. When did you begin your employment for Commercial Ship Repair?

A. I think it was March 1948.

Q. And what was your capacity for Commercial Ship Repair at the Winslow yard between August 1, 1948 and October 15, 1948?

A. General superintendent.

Q. As general superintendent, what did your duties consist of?

A. Supervise all production in the yard.

Q. Was the Urania at the Winslow yard during the period mentioned? A. Yes, sir.

Q. Did you have supervision of the work done by Commercial Ship Repair on the Urania?

A. Yes, sir. [246]

Mr. Hokanson: You may examine.

Mr. Howard: I have no questions.

The Court: You may step down.

(Witness excused.)

Mr. Hokanson: Libelants rest their case in chief, your Honor.

The Court: Respondents may now proceed.

Respondent's Case

Mr. Howard: May it please the Court, at this time I would like to make a very brief statement as to respondent's case.

The Court: You may do so.

(Opening statement made by counsel for respondent.)

The Court: Call respondent's first witness.

DEMETRI ANTIPPAS

called as a witness by and on behalf of respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard: [247]

Q. Will you state your full name and your residence address?

A. My name is Demetri Antippas, and my residence is New York.

Q. What is your occupation?

A. I am one of the directors of the Compania Naviera Limitada of Panama, and also technical adviser of the company.

Q. That company is the claimant company in this action? A. That is correct.

Q. And who is the president of that company?

A. The president is Mr. Panaghis Antippas.

Q. What relation is he to you?

A. He is my father.

Q. Will you state who the other officers of that company are?

A. The other officers of the company are my brother, Stylinos Antippas, and Mr. Spiros Antippas, my other brother.

(Testimony of Demetri Antippas.)

Q. What positions do they hold with the company?

A. Stylinos Antippas is the secretary-treasurer of the company, and Mr. Spiros Antippas is director in absentia.

Q. How many vessels are operated at the present time by your company? [248]

A. We are operating five vessels at the present time.

Q. Generally, what class of vessels are those?

A. They are classed in the dry cargo category and the tanker category.

Q. How many tankers do you operate?

A. We have one tanker.

Q. And the name of that?

A. The Urania.

Q. Will you state generally what your education has been?

A. I have been graduated from the Athens College in Greece, an American institution. I have a Bachelor of Science degree from the Kings College belonging to Durham University in England, naval architect and marine engineering. I also attended Massachusetts Institute of Technology in Boston as a graduate student.

Q. Did you receive any post graduate degree from Massachusetts Institute of Technology?

A. Master of Science degree.

Q. Will you state when and where the tanker Urania was acquired?

(Testimony of Demetri Antippas.)

A. The tanker Urania was purchased in Seattle by us from the Dulien Steel Corporation of Seattle. I believe the deal was concluded on August 4 of 1948.

Q. Will you describe that vessel and its general characteristics? [249]

A. This vessel is a type built by the Navy in large number, I should say. They are classed as yard oilers, and as they were intended for later sale, they were built under American Bureau of Shipping classification and registered as such in the American Bureau of Shipping register.

Q. Can you describe it as to length and breadth and beam?

A. The ship is 165 feet 10 inches over-all length, 32 foot 6 inch beam, and 15 feet depth. The ship draws 13 feet 4 inches of water loaded. She is powered by a Diesel engine, 560 horsepower, built by the Union Diesel Company of Oakland, California.

Q. Was that engine in the ship at the time you acquired it? A. That is correct.

Q. What in general are the cargo-carrying characteristics of this vessel?

A. This ship is classified at this present moment to carry all liquid cargoes, including high octane and such inflammable cargoes, all the way down to molasses or any other liquids derived from the petroleum trade.

Q. How many cargo tanks?

A. The boat has four cargo tanks port and starboard, a total of eight if counted individually. [250]

(Testimony of Demetri Antippas.)

Q. At the time you acquired this vessel and it was placed in operation, will you state the registry of the vessel? Was it an American flag ship or under what flag was the vessel registered?

A. When we purchased the vessel it was purchased in the name of the company, which is a Panamanian company, and therefore registered to the Panamanian register.

Q. How many crew are carried normally on that vessel? A. 17, approximately.

Q. Of that number, how many would be licensed deck officers?

A. There would be the master, who should be a licensed captain, and two deck officers, who should also carry deck officers' licenses. There would be four engineers, all four of whom should carry licenses.

Q. What type of crew was employed for operation of the vessel after you acquired it?

A. We have quite a few men which we have had in the past, men who have been with our company for a great many years, and outside of that we selected the men who would be most suited to the operation of this type vessel.

Mr. Hokanson: I object to the answer as not responsive and self serving.

The Court: The objection is overruled.

Q. Will you state the name of the master of the the [251] vessel after you purchased the vessel in August 1948?

A. My master was Andreas Beis.

(Testimony of Demetri Antippas.)

Q. What nationality is he?

A. He is a Greek.

Q. How long has he been with your company?

A. Captain Beis had been with our company for six years.

Q. In what capacity?

A. In his capacity first as first mate and then as a captain.

Q. Do you recall and can you state how long he had served as master on vessels operated by your company?

A. Approximately two and a half years.

Q. Will you state the name of the chief engineer assigned to the vessel after you acquired it in August 1948?

A. His name was Panaiotis Baxevanis.

Q. What was his nationality? A. Greek.

Q. Where was the vessel located at the time you acquired it?

A. The vessel was located at the Foss Mooring, at the Foss Tug & Launch Company Moorings.

Q. What action was taken by you at that time with respect to placing the vessel in service?

A. This vessel was designed by Sparkman & Stevens [252] of New York, and I had acquired a set of specifications from them which covered both the repair work required to make the vessel capable of carrying commercial cargoes, and also the lengthening of the vessel in order to make her larger if the owner so required. After acquiring such speci-

(Testimony of Demetri Antippas.)

fications accompanied with drawings, blueprints of this conversion, I came to Seattle and selected the items from this initial set of specifications which would be required at that time outside of lengthening the vessel.

Q. When did you come to Seattle for that purpose?

A. I came to Seattle on August 2, and I proceeded with this operation on August 4.

Q. What, if any, other representatives of your company came to Seattle or were present in Seattle at that time?

A. Mr. Harry F. Williams, who is employed by us on certain occasions as a port engineer.

Q. Was any other representative of your company present in Seattle at that time?

A. The captain of the ship was here, as well as the chief engineer.

Q. And those are the men whom you previously identified? A. That is correct. [253]

(Specifications 837 marked Respondent's Exhibit A-4 for Identification.)

Q. Will you state what experience, if any, you have had at sea on vessels?

A. I have been at sea for approximately six years, part of which was during my Navy service after being graduated from the Midshipman's Reserve School in New York as engineering officer for the Navy.

Q. That is the United States Navy?

(Testimony of Demetri Antippas.)

A. That is correct.

Q. What year would that be?

A. It was in 1942 at the Midshipman's Reserve School in New York.

Q. After you had been graduated from that school, what experience did you have at sea?

A. I was constantly at sea until 1945.

Q. Serving in what capacity?

A. Serving as engineering officer on destroyers or destroyer escorts, and also about eight months on a repair ship.

Q. Prior to that period of service in the Navy, had you had any previous experience at sea?

A. Yes, I had gone to sea quite often on ships owned by our company.

Q. As a passenger or as a crew member? [254]

A. I shipped out first as deck boy and then worked myself around to various other positions on the vessel in order to acquire experience and know how everything works.

Q. Handing you what has been marked for identification as Respondent's Exhibt A-4, can you identify that?

A. Yes. That is the set of specifications which along with the blueprints were handed to me by Sparkman & Stevens in order to accomplish the repair of this vessel.

Q. Were those specifications considered by you at the time you came to Seattle in the first part of August 1948 in connection with the tanker Urania?

(Testimony of Demetri Antippas.)

A. These specifications as a whole were considered by me as excellent. Of course, I wasn't prepared to do the lengthening of the vessel at the time I came here. I was only interested in refitting the vessel for sea, and therefore I selected out of this set of specifications such items as I considered necessary, and, of course, in accordance with the American Bureau of Shipping rules for the refitting of the vessel.

Q. Then those specifications that you have there include lengthening of the vessel?

A. That is correct. Most of the items, I should say, would refer to the lengthening of the vessel.

Q. Has that lengthening of the vessel been accomplished in the tanker Urania? [255]

A. Not to this present day.

Q. What action did you take to accomplish any repair or alteration on the tanker Urania after you arrived in Seattle in the first week of August 1948?

A. I contacted our agents here who represent our New York agents. The New York agents in Seattle are General Steamship Company, Ltd., and I asked for—I had several copies of these specifications and told them that I would like to have certain yards come on board the vessel, representatives of some yards, and go with me over the work I expected to be done, and of course, I would hand over a set of specifications and a set of blueprints, and from there I would expect an offer on a bid form to be supplied.

(Testimony of Demetri Antippas.)

Q. In requesting such bids, did you indicate what portions of those specifications the contractors were to bid on?

A. That is correct. All such copies which were handed to the various yards bear my own handwriting and my own markings as to which items are supposed to be done and which are supposed to be left out.

Q. Did you in fact receive bids as solicited?

A. I did.

Q. How many?

A. I received three bids; one from Todd Ship Yard, one from the Puget Sound Dredging Company, I believe that [256] is the full name, and one from the Commercial Ship Repair.

Q. About what time were those bids received by you, if you recall?

A. If I recall, they were received by me around three o'clock in the afternoon of August 5.

Q. Will you state please whether or not the bid of Commercial Ship Repair was the low bid received by you?

A. It was not the lowest bid. It was the next to the lowest bid.

Q. Do you recall what difference in price there was between the low bid and the bid of Commercial Ship Repair?

A. I believe it was around $780.

Q. Do you recall what the amount of the bid of Commercial Ship Repair was?

(Testimony of Demetri Antippas.)

A. I couldn't remember offhand. If my memory serves me right, it was $39,780. I should have to look at the bid form.

Q. Handing you what has been identified as Respondent's Exhibit A-1, can you identify that document?

A. Yes. That is the offer I received from the Commercial Ship Repair upon opening the bids at that time, and it does have the amount of $39,780 as cost of such repairs, and 18 working days as time for completion.

Q. What was done with respect to the awarding of a contract for the necessary work on the tanker Urania after [257] these bids were opened?

A. It is a fact that out at this coast I did not have personal knowledge of yards, and I had to select the yard partly on the bid offered, on the amount of the bid offered, and partly on what I heard or what I could collect as to information about that yard.

Q. What did you do with respect to awarding any contract or arranging for the work to be performed on the tanker Urania?

A. I called Commercial Ship Repair, or rather, I told Mr. Sweetin, if I am not mistaken, that I believed there was a way of offering the contract to them if I could get more information on the price bid.

Q. What prompted you to call Commercial Ship Repair when they were not the lowest bidder?

(Testimony of Demetri Antippas.)

A. That was something else again. It happened the first time I came out here to inspect the vessel —that was before we purchased the vessel—we were pretty well fixed on the fact that we were going to buy it and Mr. Williams was with me at the time in Seattle. We received a call at our hotel from Mr. Copeland. Of course, I did not know Mr. Copeland personally, but I have heard of him and Mr. Williams knew of him quite well, with the result that at the time before we had decided to do anything with the vessel, we had already in mind that Mr. Copeland, who was [258] with Commercial Ship Repair at the time, was a dependable man.

Mr. Hokanson: If Your Honor please, I move that the last part of the witness' answer be stricken on the ground that it is hearsay.

The Court: Objection and motion overruled and denied.

Q. Do you know in what capacity Mr. Copeland had been employed by Commercial Ship Repair?

A. I believe he was the yard manager.

Q. Was that at the Winslow yard?

A. That is correct.

Q. What if any action was taken by you with respect to arranging for the performance of this work by the Commercial Ship Repair yard?

A. As I said before, I went to their office. I called them up and went to the office and asked for a breakdown of the items on the specifications which we had for the bid, which I examined very care-

(Testimony of Demetri Antippas.)

fully, and I also had another list of various things which were not clearly indicated as being included in the original bid, and which I wanted understood that they would be so.

Q. Who was with you at the time?

A. Mr. Harry Williams was with me at the time.

Q. Who was present representing Commercial Ship Repair? [259]

A. I remember that Mr. Black was there, and Mr. Sweetin, and I believe Mr. Finn.

Q. What discussion did you have at that time concerning the proposed work to be performed on the tanker Urania?

A. I made a notation on the back of one of these copies which had a list of certain things, certain details which were not clearly indicated in this specification form. Of course, I also added three items which were in excess of the figure offered to me at the time. If I remember rightly, those items were bitts to be installed on the forecastle, the freeing-up of the engine room skylight, and making of a chartroom on the after end of the wheelhouse.

Q. Then what did you do?

A. Then I arranged with Mr. Black to insert the new figure in the letter which they had offered me.

Q. Referring now to what?

A. Exhibit A-1.

Q. Referring to Exhibit A-1, is that figure shown in there?

(Testimony of Demetri Antippas.)

A. Part of the figure is shown in there, because the chartroom — there was some question as to whether it was practical to do it on account of the mast which was in the way, and a further check should be effected. As I was leaving for New York, I asked Mr. Williams to find out if [260] such a construction would be practical, and of course the price was agreed upon by Mr. Black and myself before I left.

Q. And that is the price shown on Respondent's Exhibit A-1 for those items, with the exception of the chartroom? A. That is correct.

Q. How much was allowed for the chartroom?

A. $1500.

Q. What authority did Mr. Williams have to act for you at that time?

A. Mr. Williams had the same authority that he has had at various other times. It is a practice to take Mr. Williams out on certain jobs that we cannot be present at ourselves, and leave Mr. Williams in charge as to supervising the carrying out of the work.

Mr. Hokanson: I am going to object to the answer of this witness at this time on the ground that he is talking about what their practice is with Mr. Williams. We have here under consideration what happened on this specific occasion.

Moreover, I object to it on the ground that it is entirely self-serving, and that the best evidence of

(Testimony of Demetri Antippas.)

what that authority is is not what was contained within the mind of Mr. Antippas, but what was said to the parties at the time. [261]

The Court: The objection is overruled.

A. To make things clear, at that time Mr. Williams had the same authority he has had at other times. It is very clearly understood and Mr. Williams knows it, because it is the instructions he receives from us, that he is authorized to supervise the work, to order any other such work which he might deem necessary, but of course, if such an additional item is of great—if it is large in amount, he should first consult with the office as to the performance of such an item.

Mr. Hokanson: Same objection, Your Honor. I move the answer be stricken on the same ground.

The Court: Overruled and denied.

Q. As to the particular work that was to be undertaken on the tanker Urania, was there any other written contract arranged with the Commercial Ship Repair yard other than contained in the form of the bid shown as Respondent's Exhibit A-1, and the specifications as shown in Libelants' Exhibit 1? Do you have those before you now?

A. Yes, I do. This letter was the only contract form that we had from Commercial Ship Repair, and this set of specifications, with the exception of page 7, which was prepared after I left.

Q. What if anything did you state to the repre-

(Testimony of Demetri Antippas.)

sentatives of Commercial Ship Repair at this meeting last referred [262] to as to the extent of the authority of Mr. Williams to act for you or your company on the performance of the job in connection with the tanker Urania?

Mr. Hokanson: Same objection.

The Court: Overruled.

A. I stated that Mr. Williams' authority would be in supervising work and ordering other such work which he considered necessary; and, in general, protecting the interests of the owner in carrying out this repair work.

Q. At any time during the progress of the work, did you advise representatives of Commercial Ship Repair that Mr. Williams had authority to approve the amounts for any extra items charged?

A. I did not.

Q. Have you had on any prior occasions experience with similar work being performed in other shipyards, similar work to what was performed on the tanker Urania?

A. Yes, I have had other such work performed on other ships, even to a greater length, as a matter of fact.

Q. What has been your experience as to the practice of such yards with respect to requiring any payments in advance of the completion of the work?

Mr. Hokanson: I object to that, Your Honor.

The Court: Sustained.

Q. Was there any provision in your contract

(Testimony of Demetri Antippas.)

with [263] Commercial Ship Repair for progress payments on the work to be performed on the tanker Urania?

A. Not at any time, and as a matter of fact, if such a demand would have been made, I would have refused flatly and probably taken the work some place else.

Mr. Hokanson: I move the last part of his answer be stricken as not responsive.

The Court: The objection is overruled.

Q. How long did you remain in Seattle after you had this conference with representatives of Commercial Ship Repair on the 4th or 5th of August?

A. I left the same night and returned to New York.

Q. Did you return at any subsequent date to Seattle during the time that repairs were being made?

A. Yes, I returned on September 4, and that was about the length of time—it would cover the length of time mentioned in that bid offer of 18 working days. I wanted to see how far the work had progressed.

Q. What did you observe as to the progress of the work at that time?

A. I would say that the contract work was not half finished.

Q. How long did you stay in Seattle or at Winslow on that occasion?

(Testimony of Demetri Antippas.)

A. I am not certain. I believe it was two days.

Q. During that period from August 5 to your return to Seattle on September 4, had any additional work been ordered to be performed on the tanker Urania, to your knowledge?

A. I believe so, yes.

The Court: You do believe it had, is that correct?

The Witness: That is correct.

Q. Do you know who had ordered or requested that work to be performed?

A. Mr. Williams. He had informed me by telephone of certain items he had ordered, because he always believed in keeping me informed as to how he was going to spend my money.

Mr. Hokanson: I move the last part of his answer be stricken as not responsive.

The Court: That will be done. Do not make any voluntary statements.

Q. Had you during that period of time been in contact with your agents at Seattle? A. Yes.

Q. What if any activity had they been participating in in connection with the tanker Urania?

A. Our agents in Seattle, as anywhere else, are the people who disburse money for the account of the owners in connection with any expenses that may arise by virtue of the [265] ship being in a yard or dock or anywhere.

Q. Did the General Steamship Corporation at Seattle participate in any way in the negotiations

(Testimony of Demetri Antippas.)

or in the awarding of the contract for the repair work on the tanker Urania to the Commercial Ship Repair yard?

A. Not other than to the extent that at my request they called several yards to come on board, and I used their office to open the bids.

Q. Did you return to Seattle on any other occasion than you have previously mentioned?

A. I did not.

Q. Did you have any conversation with any representatives of the Commercial Ship Repair yard at the time you were in Seattle around the 4th of September, 1948?

A. It is quite possible I did when I went on the ship. I saw quite a few people around, and I inquired as to the progress of the work and what was being done in certain items.

Q. Did you discuss with any representative of Commercial Ship Repair yard on that occasion the matter of making any progress payments on account? A. No, not directly.

Q. Did you have any discussion with Mr. Williams concerning this matter?

A. Mr. Williams told me that he was approached by— [266] I don't remember whether it was Mr. Featherstone or Mr. Harper—and he mentioned the fact that they were rather low in funds at the time and would appreciate a payment on my part.

Mr. Hokanson: I object to the answer as involving a hearsay statement, if the Court please.

(Testimony of Demetri Antippas.)

The witness' testimony is based upon what Mr. Williams said to him as to what a third person had said. It involves a double hearsay. If it were a direct statement by Mr. Harper or Mr. Featherstone, it would be an admission against interest on the part of the libelants, but here he is relating what Mr. Williams said Mr. Featherstone or Mr. Harper said, and it is therefore a hearsay statement.

Mr. Howard: I recognize that is true, Your Honor.

The Court: The objection is sustained.

Q. What, if any, action was taken by you or your company with respect to progress payments to the Commercial Ship Repair yard on the Urania job?

A. We had no obligation to make any such payment, and we did not make one until such a request was made.

Q. You received such a request from whom?

A. I received it from Mr. Williams.

Q. And that was about what time?

A. It was just before I left in the afternoon of September 4 from the yard. As a matter of fact, I was in a hurry to reach the ferry.

Q. Handing you what has been identified as Respondent's Exhibit A-2, can you identify that?

A. Yes.

Q. Will you state what that represents?

A. That represents a receipt on the payment which we made during the course of repairs, and

(Testimony of Demetri Antippas.)

the amount was $25,000.

Q. Was that invoice, or the original of that invoice A-2, received by you prior to the time that the payment was made? A. No.

Q. Did you receive it after the payment was made? A. I think so, yes.

Q. Prior to the date of that invoice—what is the date of that, by the way? A. October 4, 1948.

Q. Had you received any other invoice from the Commercial Ship Repair yard covering any matter charged to the tanker Urania?

A. No, we did not.

Q. You have heard the statements made by several witnesses on libelants' case in chief as to another invoice having been mailed to your company at 52 Broadway, [268] New York, c/o Simpson, Spence & Young, for the sum of $30,000 representing a first progress payment. Will you state whether such an invoice was received by your company? A. It was not received.

Q. Handing you Libelants' Exhibit 2, I will ask you whether you have ever seen that invoice prior to your arrival in Seattle for the trial of this cause?

A. No, I have never seen this document before.

Q. Do you know whether that invoice was actually received in your company's office in New York?

A. It was not received.

Q. Did you have any understanding or agreement with representatives of Commercial Ship Repair extending the time for the completion of the

(Testimony of Demetri Antippas.)

contract work as set forth in Respondent's Exhibit A-1?

Mr. Hokanson: I object to the form of the question as leading.

Mr. Howard: I have asked him if he had any agreement.

The Court: The objection is overruled.

Mr. Hokanson: May I inquire at this time as to the order of proof here? Mr. Howard apparently is going into a matter which involves his cross libel.

The Court: It is agreeable to the Court. It is not easy for the Court to determine at the moment testimony [269] is offered whether it is upon the general denial or upon the cross libel, and I prefer not to be confronted with that problem in connection with each question.

Mr. Howard: I will try to confine my examination to the matters involved in the libel, Your Honor.

The Court: The objection is overruled. Answer the question.

A. When I read this letter and we agreed on the work to be done and everything was signed, sealed and delivered, I had an understanding with Mr. Black that they were to undertake the work. I mentioned the fact that I would not be too strict on the 18 days mentioned in there, because I believed that —at least, I thought at the time that if I were to insist on that date, it would probably mean a rush towards the end of it, and probably not too good

(Testimony of Demetri Antippas.)

quality of work, and I therefore mentioned I would be willing to overlook a few days more.

Q. Did you have knowledge of the extent of the additional work being performed on the tanker Urania over and above those items covered by your contract represented by Libelants' Exhibit 1 and Respondent's Exhibit A-1 prior to October 15, 1948?

A. I knew that additional items were being performed, and I was only aware of the larger items as I was informed [270] by Mr. Williams of such larger items being performed. Of course, the smaller items were to the discretion of Mr. Williams.

Q. What arrangement, if any, did you have with Mr. Williams with respect to the approval of those invoices?

A. Mr. Williams was supposed to——

Mr. Hokanson: I object to that, Your Honor.

The Court: The objection is overruled.

A. Mr. Williams was under obligation to us to collect the bills, to check the contents to see that the work mentioned in the bills was performed properly, and, of course, to present it to us and assist us in the determination whether the price was correct or too high.

Q. Did you return to Seattle prior to October 15, 1948? A. I did not.

Q. When did you next see Mr. Harry Williams after your visit to Seattle on September 4?

A. I saw Mr. Williams in New York on Satur-

(Testimony of Demetri Antippas.)

day, October 9.

Q. Where were you at that time?

A. In a restaurant.

Q. Who did you have with you at that time?

A. My family.

Q. Who was with Mr. Williams? [271]

A. His own family.

Q. Did you have any discussion with Mr. Williams at that time concerning the work that had been performed and the invoices that had been presented on the tanker Urania? A. No.

Q. What if any arrangements did you make to meet subsequently with Mr. Williams?

A. I told Mr. Williams I would expect to see him in my office Monday of the next week.

Q. Did you meet Mr. Williams in the office?

A. I did not.

Q. What was the reason?

A. I had to leave for Washington unexpectedly for that day.

Q. What was that date, please?

A. That was Monday, October 11.

Q. When did you return from Washington?

A. I returned late that night.

Q. Did you see Mr. Williams on Tuesday, October 12? A. No, I did not.

Q. Why not?

A. Tuesday was a holiday, Columbus Day, and everything was shut down.

Q. Up to that time, had you received any notifi-

(Testimony of Demetri Antippas.)

cation, any communication from the Commercial Ship Repair [272] yard concerning any of the invoices that had been presented on the tanker Urania? A. None whatsoever.

Q. Did you see Mr. Williams on Wednesday, October 13? A. No.

Q. Why not?

A. I believe Mr. Williams was out of town.

Q. Did you receive any communication from the Commercial Ship Repair yard concerning the invoices and the tanker Urania on October 13?

A. None.

Q. When did you next see Mr. Williams?

A. I saw Mr. Williams at noon on the 14th, that is right, noon of October 14.

Q. Handing you Respondent's Exhibit A-3, do you recognize that document? A. Yes, I do.

Q. What is it, please?

A. It is a cable from the Commercial Ship Repair yard signed by Mr. J. J. Featherstone, co-owner, informing us that the vessel was being libeled to insure payment of their invoices totalling $89,000, etc., etc.

Q. When you refer to a cable, that is the same as we have spoken of as a telegram?

A. That is right. [273]

Q. When did you receive that telegram?

A. We received this telegram on the morning of October 14.

Q. Up to that time, had you received any notice

(Testimony of Demetri Antippas.)

from the General Steamship Company at Seattle of any action pending or threatened against the tanker Urania?

A. We had received no notice.

Q. Up to the morning of October 14?

A. Up to that morning.

Q. How did you first learn that the tanker Urania had been arrested under a process libel in rem? A. Upon reading this cable.

Q. Did you at any time up to October 14 reach any agreement with representatives of Commercial Ship Repair as to the amounts to be charged for the extra items over and above the contract amount you have referred to? A. I did not.

Q. Did you receive any report from Mr. Williams that he had agreed to any?

A. I did not.

Q. Did you at any time up to October 14 receive from the Commercial Ship Repair any statement of the amount of labor or material being furnished on the extra work being performed on the tanker Urania?

Mr. Hokanson: I object to that on the ground [274] there is no showing in the pleadings or evidence here that there was ever any understanding or arrangement for time and material showing on this job, that same objection as I have heretofore made.

The Court: The objection is overruled.

A. I did not receive anything.

Q. Of the ships that are operated by your com-

(Testimony of Demetri Antippas.)

pany, how many of those ships were in operation in the fall of 1948? A. All of them.

Q. Five ships? A. That is correct.

Q. Including the Urania?

A. That is correct.

Q. In what type of service are those ships operated?

A. In all sorts of trans-Atlantic or coastal voyages as we may find, carrying various cargoes.

Q. Where are voyage repairs on those ships performed?

A. Mostly on the East Coast, at various yards depending on where the vessel goes in.

Mr. Hokanson: I object to this line of questioning as being irrelevant, not related to the issue here.

The Court: What is the purpose of it?

Mr. Howard: If the Court please, I am proposing to interrogate this witness further as to his knowledge [275] of any custom or usage in the steamship operation and ship repair business as to the manner in which contracts for voyage repairs or repairs of the nature of this are negotiated with a ship yard.

The Court: Should not that be confined to Puget Sound?

Mr. Howard: We might have a local custom here, but it seems to me the custom in this country would have some bearing on the question, unless it was shown that there was a different custom locally on Puget Sound.

(Testimony of Demetri Antippas.)

The Court: Is there any objection?

Mr. Hokanson: If the Court please, it is my understanding that custom, if that is to be injected as an issue in the case, should properly be pleaded. As I understand the admiralty rules, considerably more latitude is given in matters of evidence, and if counsel is to be allowed to develop the matter of custom with respect to payment arrangements in the shipping industry, I would ask the same privilege of the Court by way of rebuttal.

Mr. Howard: I was going to respond that counsel would have that opportunity in rebuttal, in any event.

The Court: The objection is sustained.

Q. Handing you Libelants' Exhibit 12, will you state [276] whether that document has been examined by you prior to this date?

A. No, it had not.

Q. Were you acquainted with the figures and the breakdown for labor, stores and purchases and overhead charged or claimed to have been charged to the tanker Urania repairs? A. I am not.

Q. State what your experience has been as to whether such a breakdown is furnished on work being performed of the nature that had been performed on the tanker Urania?

Mr. Hokanson: I object to that as not involving an issue in this case. His experience in relation to other conversion jobs has no bearing upon what the arrangements were in this case. He might have

(Testimony of Demetri Antippas.)

had negotiations in many cases where he demanded it or where it was furnished, but that is not the issue in this case.

The Court: Sustained.

Mr. Howard: You may cross-examine.

Cross-Examination

By Mr. Hokanson:

Q. What kind of a company is the Dulien Steel Company? [277]

Mr. Howard: Objected to as immaterial and irrelevant.

The Court: It will have to be more specific than that. The objection is sustained.

Q. You purchased the Urania from the Dulien Steel Company? A. That is correct.

Q. Isn't that a junk company?

A. I don't know.

Q. How much did you pay for the YO 73?

Mr. Howard: I object to that as certainly not within the issues in this case.

The Court: What issue does that have a tendency to prove or disprove?

Mr. Hokanson: If Your Honor please, I want to establish here that the repairs and alterations to this vessel were very extensive, involved a conversion job, and there were difficulties encountered which necessitated considerable work. I think the Court should be interested in knowing——

The Court: The objection to the question is sustained. You might be able by appropriate questions

(Testimony of Demetri Antippas.)

to obtain that information, but I think the objection should be sustained.

Q. Do you know the history of the YO 73? [278]

A. To some extent.

Q. Where was it before it was at the Foss Mooring? A. I believe in Alaska.

Q. For how long a period?

A. I don't know.

Q. Was it a laid-up vessel in Alaska?

Mr. Howard: If you know.

A. I don't know.

Q. Did you inquire into the history of the vessel before you purchased it? A. No, I did not.

Q. Wereren't you concerned with its condition?

A. I was concerned with what I could see.

Q. You have referred to the crew of this vessel in respect to what licenses they should hold. Is Mr. Beis now in your employ? A. Yes, he is.

Q. What is his present rating?

A. He is the captain of the steamer Perla.

Q. When did he leave the Urania?

A. About the time his deposition was taken in New York.

Q. Had he been reduced in rating at any time subsequent to his leaving the Urania? A. No.

Q. He has never been reduced to a mate status?

A. Not to my knowledge.

Q. Who is the chief engineer of the Urania at the present time? A. Mr. Jacobson.

Q. Are any of the other engineers who were

(Testimony of Demetri Antippas.)

aboard the Urania when she left Seattle still aboard her? A. They are.

Q. Who are they?

Mr. Howard: I am going to object to this line of questioning as not proper cross-examination; and further, that it is not indicated that it is within any of the issues of this case as to who is on the vessel at this time.

The Court: The identity and connection with the vessel as to Captain Beis was inquired into.

Mr. Howard: I am not objecting to that, Your Honor, but as to personnel presently on the vessel, and the new chief engineer. I object to the examination as to its crew members.

The Court: What is the purpose of it?

Mr. Hokanson: It may be relevant as bearing upon a certain breakdown that this vessel allegedly suffered.

The Court: This cross-examination is confined in [280] scope to the scope of the direct examination.

Mr. Hokanson: Very well, Your Honor. I will develop that later.

Q. The bid which Mr. Black made to you was based upon Libelants' Exhibit 1, which you have before you, was it not?

A. It was based on the specifications I gave them, from where this document was drafted.

Q. But those specifications were made up by referring to the Sparkman & Stevens specifications, were they not?

(Testimony of Demetri Antippas.)

A. They were not exactly made up. They were copied from the specifications of Sparkman & Stevens, with some references so as not to copy the whole item in the Sparkman & Stevens specifications. They refer to some items in here, for instance, "furnish and install oil piping in accordance with contract plan," "install rotary pump section S 47 of conversion specifications," and other such items as are in this document.

Q. In other words, where reference is made to a specific item, it was merely for reference purposes so they would know what plans were involved?

A. Not for reference purposes, for description purposes so as not to copy the whole extent of the specification. Some of the description of the item is [281] quite lengthy.

Q. That was the sole purpose of referring to certain specific items of Sparkman & Stevens specifications?

A. I wouldn't say the sole—I don't quite understand your question.

Q. What was your understanding as to the obligation of Commercial Ship Repair with respect to the items in the main contract?

A. Their obligation was to perform the work in accordance with my markings on the Sparkman & Stevens specifications, which I turned over to Mr. Sweetin and accompanied with the plans. This was made out so as not to confuse anybody with the rest of the items which were mentioned in this document made up by Sparkman & Stevens.

(Testimony of Demetri Antippas.)

Q. You stated in your testimony that with respect to large items, or items expensive in amount, it was Mr. Williams' obligation to consult with you concerning the price thereof, but in smaller amounts he had his discretion, is that right?

A. I did not say the price. I said the performance of the work, that is, whether the work was to be performed or not.

Q. He had the authority to order additional work? What was the limitation upon that authority?

A. The limitation was on that authority, if he wanted to have a small amount which would cost anywhere—without mentioning prices, which would be a small amount insofar as putting in a bolt or nut or renewing a pipe length, but if it were something like constructing a housing or performing some work which would be of larger extent, Mr. Williams would always consult with me before he would do so.

Q. With respect to the small items, did he have authority to obligate you for the payment of them?

A. Not necessarily.

Q. What do you mean, not necessarily?

A. I mean he would have to show me all of the accounts before any of them would be paid.

Q. But he did have authority to commit the vessel to that work?

A. He had the authority to commit the vessel to that work, and only——

(Testimony of Demetri Antippas.)

Q. In other words, there was no question about Mr. Williams' right to order all this additional work in your behalf? A. No.

Q. But nevertheless, he had no authority to commit you to the price of that work?

A. That is correct.

Q. So that if after the job was completed you were not [283] satisfied with the price established, you could arbitrarily dispute it?

A. Not arbitrarily. I would require a breakdown to see how the yard would justify a large amount on an item which I would dispute.

Q. How did that understanding with respect to the extent of Mr. Williams' authority come about?

A. I don't understand your question.

Q. Is that just an inferred understanding that you had between yourself and Mr. Williams?

A. No. It is a very clear understanding which was carried out every time I employed Mr. Williams.

Q. I have reference to the time you employed him for the Urania.

A. The same understanding was the understanding at this time.

Q. How was the understanding communicated?

A. By mouth.

Q. When did you communicate that understanding with Mr. Williams?

A. Before I came out with Mr. Williams to Seattle.

(Testimony of Demetri Antippas.)

Q. On what date?

A. I don't recall the exact date we did it, but it was before we arrived here.

Q. Where was it? [284]

A. He was with me.

Q. Do you recall where it was?

A. It might have been in my office, it might have been in Simpson, Spence & Young's office, it might have been in the plane when we were coming over.

Q. But you just discussed it with him on some occasion?

A. Not discussed it. It is a very clear ruling which we have between Mr. Williams and myself.

Q. Did Mr. Williams discuss it with you, or did you just pass it along to him?

A. I have told him about it. He agreed to it and he carried it out at all times.

Q. This understanding obtained on other jobs prior to the Urania?

A. It was obtained every time Mr. Williams was going out on a job for me.

Q. So that you have found it necessary to renew that understanding every time he undertook a job, is that correct?

A. Not necessarily. It is just a matter of form and of proper operations to make clear to Mr. Williams or who it may be who will work for me what I expect of them.

Q. Did you ever have any misunderstanding with Mr. Williams before?

(Testimony of Demetri Antippas.)

A. I never had any before or now. [285]

Q. But the fact is that every time he undertook a job for you, you had to repeat your instructions as to the limitation of his authority?

A. I would give him instructions as to the whole work, which of course would include what I expected of Mr. Williams. In some cases where it might have been something very small, I might have said, "Let me know what the story is," or something like that.

Q. Did you and Mr. Williams come out here together?

A. We did the first time we came out.

Q. When was that?

A. When we inspected the vessel.

Q. Do you remember the date?

A. I am afraid I don't.

Q. Was it in August?

A. I don't think so. I think it was before August.

Q. So that if you had this discussion with him concerning his authority on the plane, it must have been prior to August 1948?

A. I didn't say I held that discussion with Mr. Williams in the plane. I said I don't remember when. It might have been in my office, it might have been in his office. I don't remember any exact date or exact location.

Q. Did you communicate the limitation of his authority to Mr. Black? [286]

(Testimony of Demetri Antippas.)

A. I told Mr. Black Mr. Williams was my representative as far as the supervision of the work and the ordering of items. That means the orders for items would come from Mr. Williams and not from the chief engineer or the captain.

Q. But you did say that he was your representative?

A. He represented me insofar as I had made out the specifications and accepted the contracts and decided on who was going to get the job, so I had to turn over my authority to supervise the work to somebody else.

Q. The original specifications contemplated considerable additional work, did they not?

A. Not necessarily, it couldn't be determined at the time.

Mr. Howard: I am not sure which specifications you are referring to.

Q. The specifications which are identified as Libelants' Exhibit 1. Didn't those contemplate additional work? A. Some.

Q. And you came out here only once on September 4 and were here for about two days?

A. That is correct.

Q. How much additional work had been done on the vessel at that time?

A. Well, not even the original work was completed at [287] the time.

Q. But additional work had been done outside the main specifications, had it not?

(Testimony of Demetri Antippas.)

A. I don't exactly recall how much, but it couldn't have been much.

Q. Did you ever tell Mr. Black or Mr. Featherstone or any representative of Commercial Ship Repair that your arrangement with Mr. Williams was such that he had discretion in small matters to order the work, but not with respect to large matters?

A. I did not, because Mr. Williams was supposed to ask me before he would order something of large nature. Then, of course, after asking me and getting my permission in ordering larger construction, he would go ahead and transmit that to the representative of the yard.

Q. Did you tell Mr. Black or Mr. Featherstone it was required of Mr. Williams that he first contact you and obtain your authority before proceeding?

A. I trusted Mr. Williams implicitly in that matter, that he wouldn't overstep his authority with me.

Q. Concerning additional items that you agreed upon with Mr. Black that are listed, I believe, on Libelants' Exhibit 1 as items 47 and 48, were those items——

A. Would you repeat the number of the items, please?

Q. 48, 49 and 50. Did you negotiate the price of [288] those items with Mr. Black?

A. I did.

Q. Did you ask him for a time and material breakdown on them?

(Testimony of Demetri Antippas.)

A. I asked him to give me a description of the larger item of the chartroom, which he proceeded to do, to show how much steel was going to go on, how much it would cost for the labor.

Q. And you agreed with him what the amount should be? A. I did.

Q. During the course of this work, Mr. Williams went to California, didn't he?

A. He did.

Q. He purchased major items for the main engine of the vessel?

A. He did not purchase major items. I had purchased the items myself from New York, and Mr. Williams went out there to try to expedite dispatch of such items so as not to hold up the vessel.

Q. He didn't go down there to buy the items, but merely to see if he could get delivery speeded up?

A. I think there were some small items which were mentioned to me on the telephone before he went out there and which I had given him permission to order, but the bulk of the order was already done. [289]

Q. Were you kept apprised by Mr. Williams of all the extra work that was being done on this vessel? A. Most of it.

Q. How often were you in communication with him?

A. I don't know, quite often by telephone.

Q. So that you knew considerable additional work was being added to the vessel, didn't you?

(Testimony of Demetri Antippas.)

A. The term "considerable" might have been interpreted by me differently. You may say it is considerable. I may say it is not.

Q. Did you ever make any comment to Mr. Black or Mr. Featherstone when you were here in September concerning the progress of the work?

A. As far as they had progressed, it looked to me that it was probably going to turn out all right. I couldn't tell, it was still too early to express a reasonably sound opinion as to what the quality of the work was going to be. At the time, there weren't even any apparent signs of how the work was going to be completed.

The Court: What date was that?

The Witness: September 4, Your Honor, of 1948.

Q. The work had been going on for about a month at that time, hadn't it?

A. Approximately.

Q. You were reasonably well satisfied at that time, [290] were you not?

A. I couldn't commit myself and say that I had absolutely no objections to it or any remarks. I couldn't in all fairness both to the Commercial Ship Repair and to myself. There wasn't enough of it to tell.

Q. As a matter of fact, you did communicate your satisfaction with the job to Mr. Black, didn't you?

A. I encouraged Mr. Black to do the best he could.

(Testimony of Demetri Antippas.)

Q. When did you do that?

A. I was leaving the yard and trying to catch the ferry, and Mr. Black was coming in with the ferry. I was running at the time, I probably didn't even stop, I just ran through.

Q. You ran by him? A. Just about.

Q. What did you say on the way?

A. I said "Everything looks all right," or something of the kind. I wouldn't remember the exact words. It was something trivial.

Q. That was the extent of your meeting with him?

A. I think there was another gentleman who belongs to the organization who sold me the vessel with him. I probably said hello to him. I don't remember the exact details. It was long ago and I didn't attach any importance to it. [291]

Q. It was a flying visit, so to speak?

A. At the yard, or with Mr. Black?

Q. With Mr. Black.

A. Very rapid, if you want to say it that way, just about.

Q. As a matter of fact, Mr. Black introduced you to his friend, didn't he?

A. I knew Mr. Friedman before. Mr. Black had introduced him to me.

The Court: I don't recall hearing his name before. In what connection was he acting in the matter?

Mr. Hokanson: If the Court please, Mr. Black's

(Testimony of Demetri Antippas.)

testimony was that on or about September 4 in the Company of Mr. Friedman, who had visited his yard with him, they met Mr. Antippas on the dock.

The Court: I remember what he testified to concerning Mr. Antippas' expressions. You may proceed.

Q. Isn't it a fact that you paused, slapped Mr. Black on the back and told him what a wonderful job he was doing?

A. I might have stopped momentarily and said, "Carry on the good work," or something of the kind. I didn't discuss anything at length with him or anybody else at the yard. I just talked to Mr. Williams.

Q. You didn't discuss anything further with Mr. Black [292] at that time?

A. I don't remember. I may have told him more than that. I don't have any recollection of the exact things I told him.

Q. Isn't it a fact that you told him on that occasion you were going to send him a $30,000 progress payment immediately upon reaching New York?

A. I may have said I was going to send some money, but no more than that.

Q. Do you remember the amount you promised?

A. I said some money, I suppose. That is all I can tell you. I don't recall any exact words, I repeat.

Q. Did you fulfill that promise?

A. I sent some money, yes.

(Testimony of Demetri Antippas.)

Q. When?

A. I will have to look at this to tell you the exact date. I sent some money, I think about the 24th of September, to the General Steamship Company with the instructions to make the payment to the Commercial Ship Repair and to obtain a receipt for it.

Q. That was on the 24th of September?

A. I believe it was about that.

Q. You said in your direct testimony that Mr. Williams was supposed to keep you informed as to how he was spending your money. What do you mean by that? [293]

Mr. Howard: I believe that is the remark that counsel asked to have stricken, if the Court please.

The Court: Was it stricken?

Mr. Howard: It is my recollection that it was, Your Honor.

The Court: The objection is sustained.

Q. Mr. Williams did have authority to spend your money, didn't he?

A. Well, you will have to elaborate a little bit on that. It is a question which I couldn't answer the way you are putting it.

Q. Can you state to me definitely what the character of Mr. Williams' authority was? I don't understand it.

The Court: We will have to take the recess in the proceedings until tomorrow morning. We will be adjourned until tomorrow morning at 9:30.

(At 4:50 o'clock p.m., Friday, April 8, 1949, proceedings adjourned until 9:30 o'clock a.m., Saturday, April 9, 1949.) [294]

April 9, 1949, 9:30 o'clock, a.m.

DEMETRI ANTIPPAS

Cross-Examination
(Continued)

By Mr. Hokanson:

Q. As I understand your testimony, Mr. Williams had authority to negotiate the price of certain items, or pledge your credit for small items, but not for large items, is that true?

A. No. I told you before, Mr. Hokanson, in answer to your question, that Mr. Williams did not have authority to negotiate items. He had authority to order items, of course, the orders for all items would come from Mr. Williams, but before he would order a large item, something of some magnitude, he would consult me about it; but the final approval of all prices would come from me.

Q. Irrespective of the amount?

A. Irrespective of the amount.

Q. So that you had no dividing line between large and small items as to his authority to sign on your behalf?

A. That is correct. He could sign only to the extent of the performance of the work, and, of course, of [295] the wording of the item.

(Testimony of Demetri Antippas.)

Q. You did authorize Mr. Williams, however, to purchase substantial engine parts down in Oakland, California, from the Union Diesel Engine Company, did you not?

A. After I had a list of what was necessary, I authorized Mr. Williams to go to Oakland, primarily to expedite the dispatch of the items I had ordered before from New York, which in all probability would have taken some time.

Q. You ordered those items already yourself?

A. I had ordered a large quantity of items before Mr. Williams came to Seattle. We had ordered them before we started the work. A large number of items I had ordered directly from New York and we were billed directly to our office, as we did in the other items.

Q. Do you deny Mr. Williams purchased any items for your account from the Oakland Engine Company, the Union Diesel Engine Company?

A. I repeat, Mr. Williams went to Oakland.

Q. Answer yes or no.

A. I do not deny that, because as I told you before he had my approval to purchase certain additional items in addition to the ones I had ordered before, but that was after my approval, of course.

Q. Had you designated specifically what items he [296] might purchase?

A. There were quite a number of small items which he told me, "There are a number of small items which I would like to purchase for the en-

(Testimony of Demetri Antippas.)

gine," probably there were an aggregation of a lot of them. I did not inquire into the nature, but Mr. Williams always consulted with me before taking any such steps.

Q. What was the amount in terms of dollars and cents you had previously ordered from Union Diesel?

A. I have no specific recollection, unless I see the bills.

Q. Were those bills paid from New York?

A. Some of them, the things that we ordered directly from there, were paid in New York. The others, we remitted money to the General Steamship Company here in Seattle and paid for our account at our approval.

Q. Mr. Williams was the one who signed those accounts with the General Steamship Company authorizing the disbursement?

A. Well, in the case of engine parts, there are no debatable items. It is fixed prices. There is no such thing as a debatable or negotiable item when you purchase an engine part. It is cataloged and I know the price before I order it, because I have a catalog in my office.

Q. The items that were paid by General Steamship [297] Company were the items that Mr. Williams had ordered, since the money had been forwarded out here to take care of that, is that correct?

A. Yes, I had remitted a certain amount of money to General Steam for the purpose of paying

(Testimony of Demetri Antippas.)

for certain items which came C.O.D.

Q. You didn't know the parts that were necessary to be purchased by Mr. Williams, did you?

A. Some of them, I did; the smaller ones, I didn't ask because I didn't feel it was necessary.

Q. Do you know how much General Steam paid out for those items?

A. Not unless I see the accounts again. I can't remember these figures.

Q. You have no recollection?

A. No. I can't even remember what exactly was the total amount of money, that we paid to Union Diesel.

Q. Did you and Mr. Williams ever discuss the price of any of these items of extra work which he ordered done on the Urania?

A. Mr. Williams didn't have any specific idea of what the exact price would be, in most cases.

Q. Just answer the question.

A. We did, in a general way.

Q. When? [298]

A. Sometimes before the item was performed, in which case he did not give me a complete picture.

Q. You then had a general idea of what it was going to cost?

A. Not exactly, because I am perfectly aware that a figure which might be given in advance might vary greatly from what would be the final result.

Q. When did you discuss these matters with

(Testimony of Demetri Antippas.)

Mr. Williams?

A. We discussed on the telephone about the progress of the work in certain instances. I don't recall the exact dates or what was said exactly.

Q. How often did you discuss it?

A. I couldn't tell you that either, because I have no recollection of the frequency of the calls.

Q. Was it often as once a week?

A. Possibly, I don't know.

Q. But you were in communication with him all throughout this period, isn't that right?

A. Of some kind, yes.

Q. Did you ask him specifically what extra work he had ordered, so that you would know what progress was being made with the vessel?

A. As I can remember, it is an accumulation of small items, which I could not exactly ask him one at a time. [299] It would take a long time to talk about it, and over the telephone, it is difficult to describe something of this nature.

Q. How could you determine whether a particular item that Mr. Williams discussed with you as having been ordered was large or small?

A. I can differentiate between the installation of a flange and the overhaul of a boiler.

Q. Could you differentiate in advance in terms of dollars and cents?

A. I know one is high and the other is low, but I couldn't tell the exact figures.

Q. You have discussed with Mr. Williams the

(Testimony of Demetri Antippas.)

matter of repairing the boiler, didn't you?

A. To some extent, yes.

Q. Was that a large item?

A. I considered it a little higher than usual. I considered it a little more than just, as I have said, the repair of a pipe.

Q. Wasn't it considerably larger than what you have described as a small item?

A. That is a matter of comparison. I can't remember offhand.

Q. Did you discuss with him the tentative price of that item? [300]

A. Not exactly. I don't remember him giving me any specific figure on it, I can't remember.

Q. If you didn't know what it was going to be, did you authorize him to go ahead and order it?

A. Yes, I did.

Q. Your real arrangement, then, Mr. Antippas, was that Mr. Williams could order such additional work as he found necessary in connection with the conversion of the vessel, and tentatively agree on prices subject to your ratification?

A. Not tentatively agree on prices. Please don't misunderstand me, Mr. Hokanson. I will try to give you a clear picture of what I mean. Mr. Williams, of course, acting on my behalf, and trying to protect my interests, would try to inquire into the extent of the cost, or probably try to point out certain items which would be too high, but not accept anything for my account unless I saw it.

(Testimony of Demetri Antippas.)

Q. What was your idea about how the price should be fixed on this extra work?

A. In the same manner that I have done it many times, and that is that I be forwarded a draft or a bill of some form with adequate description for me to look over, and certain items which would be to my opinion too high, I would with the help of Mr. Williams try to analyze, and if [301] I could not reach such a conclusion, I would ask for a breakdown or complete analysis of that item so I could be guided in my decision as to whether this would be right or wrong.

Q. Was that arrangement outlined with Mr. Black or Mr. Featherstone?

A. To my knowledge, it is a standing arrangement at every yard I have been in.

Q. In other words, you were just basing that upon custom in your dealings with other yards?

A. In my dealings with other yards in the East Coast and West Coast.

Q. You had never dealt on the West Coast, had you? A. I have.

Q. Prior to this time?

A. After this time.

Q. I mean prior to the Urania job.

A. The dealings I had with the western yard were just about a few days later.

Q. But you mean after the work was completed out here? A. Yes.

(Testimony of Demetri Antippas.)

Q. So that then your assumption is based not upon what you knew concerning the custom on the West Coast, but in your dealings with other companies with whom you had had numerous transactions? [302]

A. I wasn't under the impression that there was such a great deal of difference throughout the United States as to custom.

Q. But your answer to my question would be yes, would it not?

A. If you will repeat your question, I may be able to answer.

Q. Read the question, please.

(Last question read by reporter.)

A. No. I have heard of other transactions on the West Coast from people associated with me.

Q. I just want an answer, yes or no.

Mr. Howard: I believe the witness should be entitled to explain his answer, if the Court please.

The Court: I believe that is correct, but I would like to hear the question repeated and also the answer.

(Last question and answer read by reporter.)

The Court: The objection is overruled.

Q. And these matters of which you have heard were subsequent to your negotiations concerning the Urania? A. Prior and subsequent.

Q. Is the custom that you have referred to in respect to arriving at the price for repair work an invariable custom? [303]

(Testimony of Demetri Antippas.)

A. I wouldn't know, at least to my knowledge.

Q. In many cases, you order the work where you negotiate the price in advance, isn't that true?

A. I did with Mr. Black. I negotiated certain items myself, and they are the ones called negotiable items. All the others are not negotiable items, because they are figured out on the basis of a proceeding that must be according to what we find as we go along, while negotiated price is like the three items mentioned in one of the exhibits I had here before, which I negotiated directly with Mr. Black.

Q. When you were here on September 4, did you check the shop orders that had been issued for extra work up to that time? A. I did not.

Q. Did you make any effort to determine how much extra work had been ordered?

A. I knew from Mr. Williams that it was not a considerable amount at this time. It was something very low, and I was not particularly concerned.

Q. As a matter of fact, about half of the extra work had been ordered at that time, isn't that true?

A. I don't know.

Q. Did you make any effort to find out?

A. From my conversation with Mr. Williams prior to [304] my arrival, I was under the impression that the extra work was not of a serious nature or an extended form.

Q. You had negotiated prices with Mr. Black on certain items of the main contract before you left, had you not?

(Testimony of Demetri Antippas.)

A. Yes, I did, because I knew of those items.

Q. Did you make any effort when you were here on September 4 to negotiate prices covering the extra work that had been ordered at that time?

A. I did not see Mr. Black in the yard at the time.

Q. Did you make an effort to have a conference with Mr. Black?

A. I did not. I didn't see any reason why I should.

Q. Did you talk to Mr. Featherstone during that period? A. Very briefly.

Q. Concerning what?

A. Concerning the general progress of the work.

Q. What was the conversation concerning that?

A. I couldn't recall the exact words. It is hard for me to remember something that was said so long ago.

Q. Getting back to Mr. Williams again, if he had authority to order the work for you but not to negotiate the price, how did you propose to establish the price with Mr. Black? [305]

A. I told you before that I expected that after the total completion of the work, all of the time sheets and the material and the labor that went into the work should be collected by the yard and a bill form or a rough sketch of the whole thing should be sent to me, and I would determine with Mr. Williams and with his guidance as to which items were right, which in our opinion were high, and if we

(Testimony of Demetri Antippas.)

did not have enough information on the matter, we would ask for additional information.

Q. That was the understanding that you had of the whole matter, but you did not communicate that to Mr. Black?

A. I communicated it. Mr. Williams knows that that is my procedure, and I assumed Mr. Black was aware.

Q. I asked you if you communicated it to Mr. Black? A. Not specifically.

Q. You didn't expect to negotiate these prices covering 70 or 80 or 90 thousand dollars worth of work after the ship left Seattle, did you?

Mr. Howard: I object to the remark of 79 or 80 or 90 thousand dollars worth of work. The pleadings show that that amount is not involved in the extras here. We have already reach a stipulation as to the amount of the contract work, 41 thousand odd dollars.

Mr. Hokanson: May it please Your Honor, I think [306] it is clear from the witness' testimony he had no knowledge of what the amount would be, and I will ask him a further question as to whether he recognized that it would be a very substantial bill.

The Witness: I don't think there should be too much of a substantial bill.

The Court: May I interrupt to remind counsel on both sides that at least three important issues here involved are: one, whether libelants were com-

(Testimony of Demetri Antippas.)

petent ship repairers; two, whether the work done in the case was in fact in accordance with good ship repair yard standards of quality; three, whether Mr. Williams was in fact authorized to approve the work and to order extras, and if his authority in any respect was limited, whether such limitation was known to the libelants.

There are other issues, but those I feel I should remind counsel of, counsel on both sides.

Mr. Howard: I renew my objection, if the Court please, to that question on behalf of the figures counsel has used in that question. We have $41,000 in contract work, and the balance of the amount claimed in the libelants' and respondent's exhibits, and it certainly does not total 70 or 80 or 90 thousand dollars.

The Court: Is it material for counsel cross-examining to include in the question not only the extras, but also the original contract work?

Mr. Hokanson: Your Honor, I will withdraw the question.

Q. You knew, Mr. Antippas, that the amount of this bill would be sizeable, did you not?

A. It all depends upon what you mean by sizeable.

Q. You knew it would be thousands of dollars rather than hundreds, did you not?

A. That is perfectly obvious.

Q. Did you expect to negotiate those prices after the ship had gone from Seattle? A. Yes.

(Testimony of Demetri Antippas.)

Q. Without an opportunity to see what installations had actually been made?

A. Well, I would be guided by what Mr. Williams told me, and by the subsequent performance of the vessel, because it is impossible to determine good work unless the vessel goes to sea.

Q. So then you wanted to wait for a period of time to see whether the work was all right before you paid the bill, is that right?

A. Not necessarily.

Q. What do you mean by the last statement?

A. You told me how I could determine, and I tell you in which way I can. I didn't say I would wait that long [308] before I could pay it or make certain arrangements.

Q. What was the purpose of your visit here on September 4?

A. I wanted to see how much work was accomplished in the period stipulated in the original letter which I had from Mr. Black.

Q. What did you expect to find in terms of progress?

A. I expected to find all of the superstructure finished, and most of the contract work finished, if not all of it.

Q. That is the reason you came out here?

A. And also to see the vessel in drydock. I wanted to see the underwater parts of the vessel.

Q. Did you express any displeasure at that time to any representatives of Commercial Ship Repair

(Testimony of Demetri Antippas.)

concerning the progress of the work?

A. I didn't.

Mr. Howard: Objected to as repetitious.

The Court: The objection is sustained. Be careful not to cover the same ground today which was covered yesterday afternoon on cross-examination. I feel certain that substantially this same question was asked yesterday afternoon of this witness, so please avoid repetition.

Mr. Hokanson: Very well, Your Honor. [309]

Q. After your visit, you thought enough of the caliber of the work being performed on the vessel and as you observed it on your visit of September 4 to order another one of your vessels down here on September 14 from Vancouver, B. C., to have $10,000 of repair work done on it, didn't you?

A. It seemed to be the most convenient location, and we are usually guided by the location of the vessel in ordering the work.

Q. But you did send your vessel to Commercial Ship Repair yard at Winslow, did you not?

A. I wanted to show my appreciation, and I believe——

Q. Answer yes or no.

A. It all depends on which form you ask me the question.

Q. Did you order the vessel to the Winslow yard? A. I did.

The Court: Which vessel do you refer to in the last question?

(Testimony of Demetri Antippas.)

Mr. Hokanson: The Pinta.

A. That is correct. I ordered the Pinta into the yard.

Q. And you knew there were other shipyards in Puget Sound, did you not?

A. Yes, I did.

The Court: May I ask counsel to let the witness make clear whether the Pinta was the vessel referred to as the one sent down from Vancouver? Will you let the witness make that clear, because the record does not show it, I do not believe.

You asked him first about a vessel sent down from Vancouver, and later you asked him about a vessel, the Pinta. Let the record show whether the two vessels were one and the same.

Q. What vessel did you send down from Vancouver in September, 1948, to the Winslow yard?

A. The Pinta.

Q. And that was on or about September 14, wasn't it?

A. I believe so. I couldn't be exactly certain of the date.

Q. Did you talk with Mr. Williams at the time you were here on September 4?

A. Yes, I did.

Q. Did you talk to him concerning why the work had not progressed further than the point you had indicated it had at that time?

A. I asked him something of the kind, and I believe he gave me an answer.

(Testimony of Demetri Antippas.)

Q. You knew Mr. Williams was in New York on October 9? A. I did, I believe so.

Q. And you arranged an appointment with him for Monday, [311] October 11, in your office?

A. I believe I did.

Q. But you left town on Monday?

A. I was forced to.

Q. And you didn't notify Mr. Williams, or call him before leaving?

A. I tried to. He was not at his office.

Q. You did call him?

A. I think I did.

Q. Did you have his home telephone?

A. Not to my knowledge, I don't think I have it. I have just his office telephone.

Q. You didn't call him when you returned Monday night to the City of New York, did you?

A. I believe Mr. Williams went to my office and found out I was not there, and I would be in afterwards.

Q. Isn't it a fact that Mr. Williams' office is one that has 24-hour telephone service?

A. I think so. I don't know.

Q. You didn't call Mr. Williams on Tuesday, even though the telephones were working on Columbus Day, did you?

A. I didn't know where to reach him.

Q. Do you know where his office is?

A. I do.

Q. Did you try to contact him? [312]

(Testimony of Demetri Antippas.)

A. I don't remember. That is something which I couldn't tell you.

Q. You knew the ship was fitted for sea when Mr. Williams had come to New York, didn't you?

A. No, the vessel was not fitted for sea when Mr. Williams came to New York.

Q. You had plans for the vessel, had you not?

A. I had plans, but the work was not completed.

Q. Then you discussed it with Mr. Williams?

A. I didn't have a chance to. I discussed it with the master.

Q. When did you discuss it with the master?

A. I was in pretty direct contact with the master, and he informed me.

Q. When?

A. I don't recall the exact date.

Q. Was it before October 9?

A. Probably on October 9, for all I know.

Q. Did you know at that time that the vessel had passed its sea trial?

A. It had not passed its sea trial, and the work was not completed on the ship. There were still workmen on the ship.

Q. Had it passed its sea trial on October 9?

A. Not all of it. [313]

Q. What part had it not passed?

A. To begin with, the Clayton boiler was not in operation.

Q. Just a moment.

A. I am answering your question.

(Testimony of Demetri Antippas.)

Mr. Howard: Give the witness a chance to answer your question.

The Court: That does not keep you from asking another question after he has made answer.

A. I was informed that the work was not finished in respect to the Clayton boiler and several other small items, and that the Commercial Ship Repair people were still on the boat at the time Mr. Williams was in New York, and even practically until the day she sailed.

Q. Who informed you of that?

A. The captain, and it is also borne in his log.

Q. Mr. Williams came to New York? He was your representative to supervise the completion of this work on the Urania, wasn't he?

A. Not necessarily.

Q. You mean to say that he was not your representative here? A. He was.

Q. Wasn't he out here to supervise the work?

A. He was. [314]

Q. And you had knowledge prior to his arrival in New York that the work was not completed on the vessel?

A. I don't remember whether I had it prior to his arrival, but Mr. Williams came to New York, as I found out later, because he had some disagreement on the bills.

Q. But in spite of the fact that you knew that there was something wrong, as you say, with the Clayton boiler, you took no pains to see Mr. Wil-

(Testimony of Demetri Antippas.)

liams about it, who had overseen the job for you?

A. I don't see why I should, because as long as something was not completed, the only thing I can say is that the yard was obliged to finish it to our satisfaction.

The Court: It would make the examination shorter if the witness would answer the question yes or no, and then add any explanation if he feels it is necessary to make an answer full, true and correct. Make a direct answer, directly responsive.

The Witness: Yes, Your Honor.

Q. Read the question, please.

(Last question read by reporter.)

A. No, I did not. I felt I knew enough about it.

Q. How could you know enough about it if you weren't out there to see the job?

A. I could hear from the chief engineer and the captain. [315]

Q. You knew Mr. Williams, nevertheless, could give you a report on the vessel, didn't you?

A. Mr. Williams would give me a final report on the vessel.

The Court: The question was, did you know that?

The Witness: Yes, I did.

Q. When was the sea trial, if you know?

A. I believe it was on or about October 4th or 5th, I don't know the exact date.

Q. It was on October 6, wasn't it?

A. It may be, I don't recall the exact date.

(Testimony of Demetri Antippas.)

Q. You didn't have such a large fleet of ships at the time that you were not concerned about discussing the condition of the Urania with Mr. Williams before sending the ship on a long sea voyage, did you?

A. I did not understand your question.

The Court: Read the question.

(Last question read by reporter.)

The Court: Can you make it shorter in some way?

Mr. Hokanson: I will rephrase the question, if you have difficulty in answering it.

The Witness: Yes, I am afraid I have.

Q. The Urania was one of five vessels owned by your company at that time, is that correct?

A. That is right. [316]

Q. And you certainly would not contemplate sending that vessel on a long sea voyage without first discussing with your surveyor the condition of the vessel preparatory to sending it to sea?

The Court: Would you? Put the question in the form of a question, do not leave it just as a statement.

Mr. Hokanson: I left it in the question form.

Q. Would you be concerned about the vessel's condition before sending it to sea?

A. In some ways, I would.

Q. In what ways?

A. If I knew that the work was not completed in a satisfactory manner, or if I knew that the

(Testimony of Demetri Antippas.)

American Bureau of Shipping had some objection as to the vessel in one way or another.

Q. Then in this case you had so much confidence in the Commercial Ship Repair Company that you didn't think it necessary to discuss the condition of the vessel with Mr. Williams before sending it out, is that true? A. That is not so.

Q. Why then did you order the vessel to sail on October 13?

A. A vessel can be seaworthy in some ways and still have a lot of defects on her, and I was satisfied that the seaworthiness of the vessel was fairly well established, but [317] there were certain items which were not completed to my satisfaction.

Q. But you did order the vessel to sail before you talked to Mr. Williams, didn't you?

A. I suppose I did.

Q. I want to know whether you did or did not, definitely. A. Apparently I did.

Q. How did you communicate the order to the vessel to sail?

A. By telephone to the captain.

Q. And do you remember when that was?

A. I don't remember. I told him to sail upon completion of the work.

Q. When?

A. I don't remember the exact date. It might have been a week before.

Q. Do you mean that you were not in communication with the captain on October 13, 1948?

(Testimony of Demetri Antippas.)

A. Not on October 13, I don't think.

Q. You called the captain before he announced his intention to sail the vessel to Commercial Ship Repair, didn't you, on the same date?

A. I don't think so.

Q. But you didn't communicate to Commercial Ship [318] Repair any information as to the sailing date of that vessel, did you?

A. Commercial Ship Repair was aware that the ship would sail after completion of the work.

Q. How were they aware of that?

A. It is obvious that when a ship is completed, it goes.

Q. Did you tell them when you were going to sail the vessel?

A. The Captain did, I did not.

Q. Why did you not tell them when you were sailing the ship?

A. I felt that the information was the same whether coming from the captain or from me.

Q. Did you tell General Steamship Company when you were going to sail the vessel?

A. When the work would be completed.

Q. You knew that Commercial Ship Repair would not release that vessel without payment or arrangement for payment, didn't you?

A. I did not.

Q. Before examining that instrument, did you know the policy of Commercial Ship Repair regarding payment on foreign flag vessels before you

(Testimony of Demetri Antippas.)

gave the order to the ship to sail? [319]

A. I was aware there was some difficulty in the previous ship, but I thought we had all straightened it out.

The Court: That does not answer the question. The Court does not know any more about this question with this answer than I knew before the answer was made. Answer it directly.

Read the question.

(Last question read by reporter.)

A. I was aware of some kind of arrangements, some kind of policy they had.

Q. What was that policy, if you knew?

A. I was informed in the case of the Pinta that they would require payment before she left, even before I received the bills, something to which I objected.

Q. Calling your attention to Libelants' Exhibit 3, did you receive that letter? A. I did.

Q. When did you receive it?

A. Shortly after September 23, the date is. I can't recall the exact date.

Q. Where were you at the time you received it?

A. In New York.

Q. Did you examine the letter carefully?

A. I did. [320]

Q. Did you ever respond to that letter?

A. By telephone, yes.

Q. To whom? A. To Mr. Black.

Q. On what date?

(Testimony of Demetri Antippas.)

A. On a date prior to the vessel's sea trial.

Q. What discussion did you have with Mr. Black at that time?

A. The discussion was whether he had received our progress payment, and if anything else would be required before the vessel goes out on sea trials.

Q. Did you discuss with him anything further about final payments on this vessel?

A. I wantel to know when final payment would be required.

Q. What did Mr. Black inform you?

A. Mr. Black very plainly informed me nothing should be required, and we should not worry about the bill, and that everything was all right.

Q. On what date?

A. That was, I believe, on the day prior to the trial. I called him.

The Court: Prior to the sea trial trip?

The Witness: Yes, Your Honor.

Q. Calling your attention to the first paragraph of [321] Libelants' Exhibit 3, you will notice that Mr. Black therein states that it was customary that all foreign ships leaving repair yards on the Pacific Coast either arrange for payment or make payment in full before leaving the contractor's yard?

A. Yes, I see the statement.

Q. Did you ask him whether he was specifically making an exception to that policy in your case when you talked to him on the telephone on October 5?

(Testimony of Demetri Antippas.)

A. I asked him in very plain language if anything else would be required, and Mr. Black said no.

Q. Did you at that time make any outline of arrangements as to how you would pay the bill on this vessel?

A. Mr. Black did not ask me and I didn't tell him.

Q. Calling your attention to page 2 of Exhibit 3, the first paragraph there, did you inquire of Mr. Black whether he would waive his request there that you make a written outline of your arrangements for payment?

A. No, I did not ask him.

Q. Would you read that paragraph?

A. "If you would write us an outline of whatever way you wish to make payments on your ships while in this port, we should be only too glad to cooperate with you, and assure you want your friendship, your business, and will do everything within our power to give you good work and value received." [322]

Q. Did you arrange any collateral or security with Commercial Ship Repair before ordering the vessel to sail?

A. No, I did not, because I was not asked to.

Q. As a matter of fact, you scrupulously avoided Mr. Williams in New York City from October 9 until October 14, did you not? A. I did not.

Mr. Howard: I object to that, if the Court please, as argumentative.

(Testimony of Demetri Antippas.)

The Court: The objection is overruled.

A. I did not.

Q. You knew he had a report to deliver to you concerning the vessel, didn't you?

A. No, I didn't, because a report is usually handed in much after the vessel sails.

Q. You knew he had invoices in his possession, did you not?

A. I knew he had somethng in his possession as to the bills covering the boat, I didn't know exactly what he had.

Q. Why did you order him to meet you Monday morning?

A. I wanted to discuss this thing with him.

Q. But you made no further effort to get hold of him thereafter until the ship had been libeled, did you?

A. I expected Mr. Williams in my office on the first [323] working day of the week.

Q. Did you know on October 9 that there was some disagreement about the bill, as you have previously testified?

A. I knew that Mr. Williams had some objections to the value of some items on the bill, yes, I did.

Q. How did you know that?

A. I believe Mr. Williams had told me that there was some kind of disagreement on the bill before, previously to October 9.

Q. When did he tell you that?

(Testimony of Demetri Antippas.)

A. I don't recall; sometime during the previous week, I believe.

Q. Was it over the telephone?

A. I believe so.

Q. Did you at that time request a breakdown of time and material on this job?

A. I wanted first—I did not, because I wanted first to see what was presented to me and then ask for a breakdown of materials and labor on the items I felt were too high.

Q. Speaking of Captain Beis, isn't it true that he has only worked for your company since the latter part of 1946? A. No. [324]

Q. Are you aware that the captain has under oath testified that he first sailed with your company in the latter part of 1946?

A. He sailed with our company directly as a Panamanian company, but he had sailed before for vessels which had some connection with our office, before that.

Q. Vessels owned by your office?

A. Managed by our office.

Q. So that he actually was not in the employ of your corporation prior to that date?

A. He was hired by me and he worked under my directions.

Q. Do you wish to correct your testimony of yesterday that he had been in your employ for over six years?

A. If you technically want to state it that way, I would.

(Testimony of Demetri Antippas.)

Q. Your company was not doing business in the State of Washington in October 1948 was it, as a corporation?

A. We were not doing business in the State of Washington; we were doing business in the State of New York.

Q. Your corporation is a foreign corporation, is it not? A. Yes.

Q. You had not posted any collateral or security either in Seattle or Winslow for the payment of this bill? [325]

A. No, I did not, because I was not asked to.

Q. You had not advanced any funds to your agents to pay that bill at that time?

A. No, because I didn't see the bills and I wouldn't pay for something I don't see.

Q. Under those circumstances, you expected Commercial Ship Repair to await your whim as to the payment of these bills?

Mr. Howard: That is objected to as argumentative, if the Court please. I think the facts speak for themselves.

The Court: That objection is sustained, in view of the wording of the question.

Q. You expected Commercial Ship Repair to await your pleasure as to whether the price they had fixed met with your approval?

Mr. Howard: Same objection.

The Court: Overruled.

(Testimony of Demetri Antippas.)

A. I expected Commercial Ship Repair, if they wanted something to guarantee, to either ask for a letter of guarantee from somebody that would accept it, as Simpson, Spence & Young, who represent us in New York, or post bond, which we would have done gladly, but I still think I should be allowed to look at bills before I pay them.

Q. You knew that after the ship sailed from Puget [326] Sound for foreign waters that it would be most difficult for Commercial Ship Repair to collect that bill if you wanted to dispute any of the items?

A. I don't think so. I have a different opinion on it.

Q. You weren't doing business in this state, were you?

A. We were doing business in the State of New York and in all of America.

Q. In other words, you wanted Commercial Ship Repair to go back to New York to try to collect the bill if you disputed it?

A. No, I would come here myself to dispute it with them.

Q. Why didn't you come out then when you knew that Mr. Williams had a dispute over the amount of the bill, as you say?

A. I don't know why, I was probably detained, but I wanted to see the vessel and then decide on it.

Mr. Hokanson: You may examine.

(Testimony of Demetri Antippas.)

Redirect Examination

By Mr. Howard:

Q. Why did Captain Beis leave the tanker Urania?

A. I ordered him ashore to make his deposition, and the tanker had to sail and therefore I had to take him [327] off that ship.

Q. When was he taken off the ship?

A. I don't recall the exact date. It is when the ship was in New Orleans, where she was loading, and that was about the only time I could get Captain Beis for a deposition, because the ship was sailing for foreign waters.

Mr. Howard: At this time, if the Court please, I would like to offer Respondent's Exhibit A-4. That exhibit was identified by the witness on direct examination. At this time, I am offering it.

Mr. Hokanson: If the Court please, I would like to examine the witness further concerning the admissibility of this document.

The Court: You may do so, but I recommend to counsel on both sides in the future that you observe the prima facie showing, if there is any such, or at least the evidence relating to the showing on direct examination of——

Mr. Hokanson: I will now object without further examination.

The Court: ——admissibility, and if there is a prima facie showing, I tell you that usually the Court admits an exhibit and then the cross-examina-

(Testimony of Demetri Antippas.)

tion may be indulged as to that, as well as to all other matters gone into on direct. [328]

I remind counsel on both sides that in respect to almost every exhibit in this case, opposing counsel has asked for some such leave as that now asked here. It is rather unusual that the need for such develops in connection with every offered exhibit. You may inquire, with that explanation.

Mr. Hokanson: I need not inquire further, if Your Honor will recall the testimony concerning this document. I object to the admission on the ground that the witness has testified that this represents a copy of certain specifications that he carried with him, copies of which he in turn submitted to certain ship repair companies in the Puget Sound area. The pencil notations in each case concerned what he wanted done and what he did not want done. The document bears no such notations, and I submit, Your Honor, it is therefore not admissible in evidence.

Mr. Howard: If the Court please, this witness has testified that this document was furnished with some notations to the yards that were requested to bid on the work, and by this witness and other witnesses libelant has produced it has been developed that other specifications were drawn from these specifications. I am offering this only for the benefit of the Court in showing basis and background for the specifications [329] for the contract work that was eventually agreed upon.

The Court: Does it have on it copies of the nota-

(Testimony of Demetri Antippas.)

tions which are the point connected with this exhibit?

Mr. Howard: This particular copy does not, if the Court please. I believe libelant has in its possession a copy with the notations.

The Court: Has it any relation to any other exhibit already in evidence?

Mr. Howard: Yes, Your Honor.

The Court: Which one?

Mr. Howard: It has a relation to Libelants' Exhibit 1.

The Court: Does it contain the same information as Libelants' Exhibit 1? Is there any difference?

Mr. Howard: It has been testified to that Libelants' Exhibit 1 was prepared from this document.

The Court: They are not carbon copies, or run off the same machine?

Mr. Howard: No, Your Honor. This document I am now offering is much larger and covers much more ground than Libelants' Exhibit 1. Since it has been testified that certain specifications were furnished to several yards that were asked to bid on this work, and libelants' own witnesses have testified that they prepared [330] certain specifications, being Libelants' Exhibit 1, from the data that had been furnished by the claimant corporation, it seems to me that it is entirely proper for this document to be furnished for the Court's guidance to show how Libelants' Exhibit 1 was prepared and what relationship there is between the two.

The Court: The Court is ready to rule upon the

(Testimony of Demetri Antippas.)

matter. Respondent's Exhibit A-4 is admitted, the objection thereto being overruled.

(Respondent's Exhibit A-4 received in evidence.)

Mr. Hokanson: May I ask the Court to state whether there is any limitation upon the purpose for which this document is admitted in evidence?

The Court: The Court has not placed any limit upon the exhibit. It is received in evidence, and those connected with the case are charged with a recollection of the explanatory authenticating testimony in connection with this exhibit.

Q. Did you advise the representatives of Commercial Ship Repair at the time you were in Seattle on August 4th or 5th to arrange for the work to be performed as to the extent of the authority that Mr. Williams had acting as your representative in Seattle? A. I did. [331]

Q. Will you state now what you told Commercial Ship Repair at that time as to the extent of the authority of Mr. Williams?

A. That Mr. Williams was in Seattle as my representative in respect to the work being performed on the vessel, in a supervisory capacity, and also with the authority to order some items of extra work to be performed, and that under no circumstances should anything be ordered other than by Mr. Williams, and that included the captain and the chief engineer and all the rest of the personnel of the vessel.

Q. Did you advise Commercial Ship Repair of

(Testimony of Demetri Antippas.)

any limitations or restrictions on the authority of Mr. Williams as your representative?

Mr. Hokanson: May it please the Court, I think that question has been quite fully developed on direct examination. I think it is repetitious at this time.

The Court: What is there in cross that causes you to have this right now, at this stage of this witness' testimony?

Mr. Howard: If the Court please, I was prompted by the Court's reminder to us of the principal issues that you felt were before the Court, one of them being Mr. Williams' authority to approve the work, and whether [332] the authority was limited and known to the libelants. I am merely trying to develop if he knew exactly what that authority was.

The Court: You may ask this question.

A. I did not in so many words. I stated what he was supposed to do and what he was authorized to do. I did not say what he was not authorized to do, believing that the explanation of what he could perform for me was enough.

Q. Why was such an arrangement made with Mr. Williams?

A. We always have such an arrangement made, because I believe I am entitled and have the privilege of examining the bills before I pay them. I believe it is good policy.

Mr. Hokanson: I move that the latter part of

(Testimony of Demetri Antippas.)

his answer be stricken. He is arguing and not answering the question.

The Court: The answer is responsive and the objection is overruled.

Q. How was this arrangement carried out between you and Mr. Williams as to the work on the Urania?

A. Mr. Williams comes to New York with the bills, which are presented to me, and with the assistance of Mr. Williams, each item is examined and the cost of such item is determined, whether correct or too high. In the instances where such an item has not enough information for me to [333] decide whether the item is too high, I request further information as I did in this case, because the bill was—there were too many items under one cost. It was not broken down into separate items.

Q. You stated on cross-examination that you had had some advance discussion with Mr. Williams regarding the cost of extras. Was the amount to be charged by the yard for the items of extra work indicated to you at that time?

A. Not exactly. I had some kind of information that this item would run into thousands instead of hundreds.

Q. The actual amount charged by the yard was not known to you at that time?

A. Not whatever.

Q. When you were out here on September 4, did Mr. Black or Mr. Featherstone request you to go

(Testimony of Demetri Antippas.)

over the shop orders to determine the cost and the amount to be charged?

A. No, not whatsoever.

Q. Did anyone else from Commercial Ship Repair ask you to go over those accounts?

A. Nobody.

Q. Did anybody from the Commercial Ship Repair ask you on September 4 to approve any accounts? A. No.

Q. You have referred to a sea trial on October 4 or October 6. Was another sea trial held later on? [334] A. No, just one.

The Court: May I ask in that connection the witness to state whether or not he was advised of any substantial objection to the work done on the vessel and to the performance by the vessel as a result of that sea trial? Did he or anyone on his behalf raise any objection to any work done or to any ship performance as a result of that sea trial?

Q. Will you answer that question, please?

A. Yes, Your Honor. The captain and the chief engineer who were going to sail the vessel had some objection as to some of the work performed on the vessel.

The Court: If you know, will you explain what those objections were?

The Witness: The main objection that I am quite certain I remember was the Clayton boiler, which is quite an important part of the vessel. That was not in operation until, I suppose just until

(Testimony of Demetri Antippas.)

the day the vessel actually sailed after the sea trial.

The Court: Was the Clayton boiler supposed to be in use on that sea trial?

The Witness: It was supposed to be in use on that sea trial, because the sea trial determines whether a vessel is ready to go to sea.

The Court: Was it used on that sea trial? [335]

The Witness: I don't know whether it was or wasn't, Your Honor.

Q. Was there some defect or deficiency discovered in the Clayton boiler at the time of the sea trial?

Mr. Hokanson: If he knows.

A. I believe it did. I am not absolutely certain, on the sea trial or immediately upon returning from the sea trial.

The Court: State if you know what was done or attempted to be done thereafter in connection with any such objection.

The Witness: Mr. Williams not being here after the sea trial, Mr. Clark, an independent surveyor in Seattle, was asked to go aboard the vessel for the account of the owners to supervise and examine such defects found in the boiler, and I believe it was found as per his report that the feed pump was leaking from the plunger and from some joint on the feed pump, and therefore rendered the boiler not serviceable.

The Court: Did he require some improvement of that condition?

(Testimony of Demetri Antippas.)

The Witness: Yes, Your Honor.

The Court: With what result?

The Witness: With the result that Commercial Ship [336] Repair sent men on the ship to complete that work, and certain other items which I cannot recall the exact nature of, but this was the major one. Mr. Featherstone was present at such examination and repair.

The Court: With what final result?

The Witness: With the final result that the boiler was then deemed serviceable.

The Court: Was any objection made on behalf of the owners after such deeming serviceable?

The Witness: Not that I recall, Your Honor.

Mr. Howard: Your Honor, I might state that we have the depositions of Mr. Clark and another witness who will develop the point as to this Clayton boiler, and we intend to develop that in our case on the cross-libel.

The Court: Proceed.

Q. Assume that after the sea trial on October 4th or 6th, everything aboard the vessel was passed to satisfaction. What would you have done then with respect to the ship?

A. I would have ordered——

Mr. Hokanson: This is not proper redirect examination, if the Court please.

The Court: What was there in the cross-examination that makes this appropriate? [337]

Mr. Howard: If the Court please, counsel for

(Testimony of Demetri Antippas.)

the libelants has gone into great detail in cross-examination in trying to develop what transpired between Mr. Williams, Mr. Antippas and representatives of Commercial Ship Repair on or about the time of the sea trial, and what was Mr. Antippas' intention with respect to these bills and the payment of the account after they had been sent back to New York with Mr. Williams.

I certainly feel that we should be entitled to develop what would have happened on this vessel if it had passed satisfactorily on the sea trial with respect to the dispatch of the vessel from Winslow, particularly where he has testified—he has been asked by counsel for libelant what conversation he had with Mr. Black immediately prior to the sea trial as to payments to be made on the account. You recall that on cross-examination counsel asked him about his conversation and he testified everything was O. K.

The Court: May I hear the question?

(Last question read by reporter.)

The Court: Do you think it is specific enough, Mr. Howard? The Court does not feel that it is with respect to what kind of action or proceeding.

Mr. Howard: I will rephrase it.

Q. What were your plans with respect to sailing the [338] ship after the sea trial?

A. If the sea trial was satisfactory, the ship would have sailed forthwith, that means, immediately.

(Testimony of Demetri Antippas.)

The Court: Ask him another question.

Q. If Mr. Black told you that everything was O. K. just prior to the sea trial, then you would have sailed the vessel immediately after the sea trial? A. That is correct.

Mr. Hokanson: He is leading the witness.

The Court: That is sustained. The answer will be stricken.

Q. Did you receive a report from the master of the vessel as to the satisfactory completion of the repairs after Mr. Williams left Seattle to go to New York? A. I did.

Q. Do you recall when that was received?

A. I don't recall the exact date.

The Court: May I be reminded of the person from whom he received such advice?

Mr. Howard: From the master of the vessel, Your Honor.

Q. Can you relate that advice from the master as to the time that the ship was libeled?

A. I didn't understand your question.

Q. Can you relate the time of your receipt of the [339] advice from the master of the vessel as to satisfactory completion of the work as to the time when the vessel was libeled?

A. Yes, the report was received after the vessel was libeled.

The Court: I am not sure that I appreciate the meaning of the questions and answers, Mr. Howard. By that do you seek to bring out the attitude of the

(Testimony of Demetri Antippas.)

master with respect to the quality of the work, or what is the meaning and purpose of the inquiry?

Mr. Howard: The purpose of my question, if the Court please, is to bring out to the Court that Mr. Antippas received advice from the master after Mr. Williams left Seattle for New York that the repairs had been satisfactorily completed so that the vessel could go to sea.

The Court: You may proceed.

Mr. Howard: I have no further questions.

Recross-Examination

By Mr. Hokanson:

Q. When did you receive the report, if you remember, that you referred to?

A. Which report are you talking about, Mr. Hokanson?

Q. From the master. [340]

A. I stated before I don't remember the exact date.

Q. Was it before or after the libel?

A. I said after the libel.

Q. How long afterward?

A. I told you I don't remember the exact date. I just know in relation to the libel.

Q. Was it written or oral?

A. I believe it was oral, over the telephone.

Q. Did you know that the American Bureau of Shipping and Mr. Williams had approved the vessel upon the completion of the sea trial?

A. I knew the American Bureau of Shipping

(Testimony of Demetri Antippas.)

had approved.

Q. Mr. Clark was sent aboard the vessel concerning the Clayton boiler after the vessel was libeled, isn't that true?

Mr. Howard: If you know.

A. I believe so.

Q. And you had ordered the vessel to go to sea before the libel, hadn't you?

A. I had ordered the vessel to go to sea upon completion of repairs. I assumed when the American Bureau passed it everything was all right. It so developed it wasn't.

Q. So that you were in effect looking for defects after the vessel was libeled, isn't that true? [341]

A. I did not. They developed.

Q. Isn't it true that this Clayton boiler objection was never brought into this case until very recently, when you advised your counsel to amend his cross-libel to include that item?

Mr. Howard: I think this term "very recently" should be made more definite. That is a pretty broad term.

The Court: Sustained. Relate the time inquired about with reference to the commencement of this action.

Q. You knew about the alleged defects with the Clayton boiler on or about October 15, 1948, didn't you?

A. Yes, I did know of the defects.

Q. You did not cause that item of alleged dam-

(Testimony of Demetri Antippas.)

age to be injected into this case until March 18, 1949, isn't that true?

A. I did, because there were further repairs made at that time.

Q. The Clayton boiler has no connection with the main propulsion of the vessel Urania, does it?

A. It does not have connection with the main propulsion, but it has very direct connection with the general operation of the vessel.

Q. Then it was operated on the sea trial, is that correct? A. I assume it was. [342]

Q. Then the American Bureau passed the vessel after the sea trial, did it not?

A. I believe so.

Q. Then Mr. Williams passed it, did he not?

A. I believe so.

Q. In answering Mr. Howard's question on redirect examination, you said that you requested further information in this case for your guidance with respect to the amount of the bill. When did you make such a request and to whom?

A. I made such a request to Mr. Williams when I saw him.

Q. Did you ever make it to Mr. Black or Mr. Featherstone?

A. I couldn't very well make it, because I hadn't seen any of the bills by that time.

Q. Did you ever make a request after the institution of the libel for further breakdown on that bill?

A. After the institution of the libel, Mr. Black was very definite that he didn't want to offer any

(Testimony of Demetri Antippas.)

more explanation about it. I tried to reach Mr. Black all day that day and I just couldn't

Q. What day is this?

A. The day of the 14th of October, after I received a cable for the libel in the morning. I tried all day to reach Mr. Black and ask why such action was taken and find [343] out what the whole story was, and I couldn't find Mr. Black.

Q. You did not reach him on the 14th?

A. I reached him in the evening of the 14th, after trying all his telephone numbers, and upon discussion with him he very definitely stated that he wanted the money and nothing else. He didn't want to give me any further explanation.

Q. Where was Mr. Black located by you?

A. I tried Mr. Black both at the Seattle office, at the Bainbridge office, and all over, and I was given certain assurance that Mr. Black would call me right back, and it was not until the afternoon of that day that I managed to reach Mr. Black.

Q. What time in the afternoon?

A. I don't remember. I have noted on this letter a number at Port Blakely where I had the information that Mr. Black was. I tried his telephone at Main 3122, Port Blakely 500, but it was some time in the afternoon that I reached Mr. Black.

Q. Where was he when you reached him?

A. I don't recall which of the numbers he was at, but I did reach him.

Q. Isn't it a fact that you talked to Mr. Black on the telephone at 11:30 A. M. Seattle time on Oc-

(Testimony of Demetri Antippas.)

tober 14 at his Seattle office? [344]

A. 11:30 A. M. Seattle time would be three o'clock in the afternoon in New York.

Q. So that would coincide with what you discussed with me here concerning the time?

A. Possibly, I don't recall the exact time when I reached him. I knew it was afternoon when I did.

Q. Did you at that time request an itemization of this account?

A. I did. I said I wanted to look at the accounts before I could make any decision, and Mr. Black was absolutely, very strong about it, and I don't remember the exact wording he used, but I was rather offended.

Q. You had already seen Mr. Williams, had you not? A. I had not.

Q. You had not talked to Mr. Williams prior to the time you talked to Mr. Black?

A. I think I did. I think he came at noon just before I got Mr. Black, with the bills. I believe he did.

Q. He had in his possession signed invoices, did he not?

A. He had the invoices which are represented here.

Q. He had Job Order 678 signed and approved, didn't he?

A. As far as the work is concerned, yes.

Q. So that you had an itemization of the work, did [345] you not?

(Testimony of Demetri Antippas.)

A. It was not itemized to my satisfaction. I still repeat what I said before, that this bill was not satisfactory as far as the thing was concerned. I wanted more information on certain items.

Mr. Hokanson: No further questions.

Redirect Examination

By Mr. Howard:

Q. Mr. Antippas, when this matter was referred to our firm to represent you in this action, did you advise us that you were claiming damages because of the breakdown or inadequate repair of the Clayton boiler?

A. Not at that time.

Q. When did you first advise us of that?

A. After the breakdown occurred, while the vessel was at sea. I don't remember the exact date, but I think it was two or three weeks after the ship sailed and after we advised your firm to undertake this matter for us.

Q. It was before the date that counsel has mentioned in March of 1949?

A. Yes, definitely before.

Q. Do you know why that item was not included in the cross-libel as originally prepared?

A. I believe we did not receive the information on [346] it until then of the cost and what was done.

Mr. Howard: At this time, if the Court please, I would like to let the record show that a motion for production of documents was filed on behalf of the claimant and cross-libelant on March 28, and as one

(Testimony of Demetri Antippas.)

of those items, we requested item 4, any and all time sheets and records showing breakdown of time of workmen and supervisors furnished to respondent vessel on each item of the contract and/or extra specifications. That, among other things, was requested.

The Court: With what result? Did the Court grant your request?

Mr. Howard: By agreement with counsel, we were allowed to examine what documents were then available. The Libelant was then unable to produce for us any breakdown or analysis of the time of workmen and supervisors that went into this job on either the contract or the extra work.

The Court: What point is made of that now? Now they can do it and then they couldn't, is that your point?

Mr. Howard: That is correct. This witness has been asked whether any such information was ever requested of the libelant.

Mr. Hokanson: May I be heard, Your Honor?

The Court: You may. [347]

Mr. Hokanson: I don't know what Mr. Howard proposes to establish by his statement at this time, but pursuant to that request contained in the motion, we made every effort to cooperate and furnish, if the Court please, all of the records, supporting data that have been introduced in evidence in this case to date, save and excepting an analysis based upon those detailed records.

(Testimony of Demetri Antippas.)

The Court: What analysis? Where is it?

Mr. Hokanson: The analysis I have reference to is Mr. Harper's computation. It has been introduced in evidence as Libelants' Exhibit 12. If the Court will examine the motion to produce, No. 4 thereof merely requests any and all time sheets and records showing breakdown of time of workmen and supervisors furnished to the respondent vessel, which we fully furnished.

The Court: Did you furnish them a copy of 12 as soon as it was prepared, or at a reasonable time thereafter?

Mr. Hokanson: We undertook the preparation of it, Your Honor, at about the time that the request was made on us to produce these documents.

The Court: Did opposing counsel ever have the benefit of the information in 12 until it was [348] identified as an exhibit in this case? Did he know anything about its contents before that time?

Mr. Hokanson: He had access to the same records we did from which that analysis was made.

The Court: But not the analysis which your clients made?

Mr. Hokanson: I myself, Your Honor, did not have the benefit of that analysis until at least a few hours before the time that this trial commenced, because it involved a detailed, extensive study of those documents before it could be made up properly.

The Court: Being myself not entirely clear as

(Testimony of Demetri Antippas.)

to what the purpose of the statement was, I think it proper to say that doubtless respondents had the same opportunity and capacity for making studies of the nature similar to that of Exhibit 12, the same as libelants had.

You may proceed.

Mr. Howard: I have no further questions.

The Court: Is there any further cross-examination?

Mr. Hokanson: No, not at this time.

The Court: You may step down.

(Witness excused.)

The Court: Call respondent's next witness.

Mr. Howard: Mr. Williams. [349]

HARRY F. WILLIAMS

called as a witness by and on behalf of respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard:

The Court: You have been previously sworn and may resume the stand. In this connection, it might be convenient for you to state your name.

The Witness: Harry F. Williams, 2553 Bedford Avenue, Brooklyn, New York.

Q. You have already testified as to your employment? A. Yes, sir.

(Testimony of Harry F. Williams.)

Q. Will you state what your arrangement was with Mr. Antippas and Compania Naviera Limitada as to your representation of that company on this particular assignment on the tanker Urania at Winslow?

A. I think it was in July that Mr. Antippas sent for me to come to his office and discuss the possibility of buying this YO 73, and I accompanied him to Seattle. We examined the vessel and noted its defects and drew up a brief summary of what would be required to make it a merchant tanker. We returned to New York, and he instructed me to [350] correspond with the Union Diesel Engine Company about the price of the different parts that we found necessary to install to pass the classification society. Also, we noted conditions of the hull, the furniture, and we went up to Sparkman & Stevens and looked over another conversion that was done by the Sinclair Oil Company, and Mr. Antippas instructed us to draw up a set of specifications for lengthening this vessel for the classification society, which Sparkman & Stevens did.

I didn't hear from Mr. Antippas again until about the month of August, when he informed me that he had bought the vessel or was about to buy the vessel, and wanted me to go to Seattle with him. I couldn't go that day, so I came a little later.

Q. Handing you Respondent's Exhibit A-4, can you identify that document?

A. This is the specifications drawn up by Spark-

(Testimony of Harry F. Williams.)

man & Stevens with the set of drawings.

The Court: Are those the specifications referred to in your phrase, "He instructed us to draw up specifications"?

The Witness: That's right.

The Court: By "us" in the former statement, you meant your firm?

The Witness: Meaning the firm. [351]

Q. Were those specifications drawn by your firm in conjunction with Sparkman & Stevens?

A. By discussions together, yes. They were drawn up by Sparkman & Stevens in my presence, and we passed back and forth different opinions. Mr. Antippas and I went up to the drawing office and we made different alterations that suited our condition.

Q. What did you do with those specifications after they had been completed?

A. I brought them down to Mr. Antippas and then he came here, purchased this vessel, and as the testimony says, I wasn't here then. He put it out for bid and he sent for me, and I came the day that the bid was opened.

Q. Are you referring to the date on August 4th or 5th?

A. August 4th or whatever it was.

Q. At that time, what instructions did you have from Mr. Antippas as to your authority to act for him in connection with the repairs on the tanker Urania at the Winslow yard?

(Testimony of Harry F. Williams.)

Mr. Hokanson: May it please the Court, I now object to the question on the ground that this witness is not competent to testify as to what authority he was granted by Mr. Antippas with reference to this work, and that the best evidence of what that authority [352] was exists in the form of statements made by Mr. Antippas, the principal here representing the claimant corporation. My objection further goes to this line of questioning on the ground that his authority is evidenced by written instruments which have already been introduced in evidence, and the parol rule stands in the way of testimony now relating to his authority.

The Court: The last objection only is deemed by the Court appropriate and pertinent. What have you to say, Mr. Howard?

Mr. Howard: I would like to inquire from counsel as to what instruments he is referring to now in the record which show the authority.

Mr. Hokanson: Libelants' Exhibits 4, 5 and 6, Your Honor, which bear the signature of Mr. Williams as owners' representative, signed invoices for Job Order 678.

The Court: Do those exhibits show any statement from the owner as to what this witness' authority was?

Mr. Hokanson: They do not, Your Honor.

The Court: Those exhibits were made by libelants? They were not made by the owner?

Mr. Hokanson: That is right.

(Testimony of Harry F. Williams.)

The Court: The objection is overruled, provided, however, that counsel for libelants may bring to the [353] Court's attention at this time or later any written document which purports to express the terms of employment and the scope of authority of the agency of this witness, and the Court will reconsider this question if any such is called to the Court's attention. Until then, the objection is overruled.

A. His instructions to me was to see that this vessel went through the repairs, and he also gave me authority to order any item that is necessary to bring this tanker to a merchant marine standard.

Q. Did you have any instructions from Mr. Antippas as to your authority to approve the accounts for work performed?

A. Not at that time, because there was no accounts involved.

Q. You say that you had no instructions at that time as to authority to approve accounts. Had you had any previous instructions?

Mr. Hokanson: I object to that, Your Honor, on the same grounds that I have previously objected on.

The Court: The objection is overruled.

A. It is customary, when a shipowner hires a surveyor——

The Court: That is not a direct answer. Answer it directly. [354]

A. No.

Q. Did you have any subsequent instructions

(Testimony of Harry F. Williams.)

from the Compania Naviera Limitada or Mr. Antippas as to your authority to approve the accounts for extra work on the tanker Urania?

Mr. Hokanson: Objected to as leading, in its present form.

A. Not in this area, I didn't.

The Court: What do you mean by "this area"?

A. I worked with Mr. Antippas in the East, and there was an entirely different arrangement. We were closer together. I could be within an hour's reach of him, or two hours at the tops, and financial settlements were somewhat arranged different than was required here. In other words, he had an established credit in the yards we worked in.

The Court: Did you intend to say in answer to Mr. Howard, within the last two or three questions, that you had in connection with the repairs on the Urania no authority to approve the accounts for those repairs? A. At that time.

The Court: During the time they were being made?

A. That's right.

Q. Did you have any authority to approve [355] the accounts for the extra work at the time the invoices were presented to you on October 9?

A. To a reasonable amount, but anything that was in excess, I would have to phone him and inform him so before I would have permission to put that work in hand.

(Testimony of Harry F. Williams.)

Q. That was as to the approval of the amounts?

A. That's right.

Q. Going back to the original conference on August 4 at Seattle, were you present in the Commercial Ship Repair office at the time this work was discussed with Mr. Black and others of Commercial Ship Repair? A. I was.

Q. Was any mention made at that time of the Commercial Ship Repair yard requiring progress payments during the course of the work?

A. No, sir.

Q. At any time after that was the question of progress payments discussed with you by representatives of the yard?

A. After I was over at Winslow and they worked for a while and there was extensive extras ordered, I believe Mr. Harper approached me first and says, "Would it be possible for you to get in touch with your owners and ask them for a progress payment?"

Q. And what did you do after that? [356]

A. I suggested, "How much do they think they would need?" So he asserted the sum of $30,000, I think, and I said, "All right, make a progress payment bill and we will mail it to New York to Mr. Antippas."

Q. On October 8, when these invoices were presented to you, Libelants' Exhibits 4, 5 and 6, what if anything was said by you at that time as to approval of the amounts charged for extras and spare parts?

(Testimony of Harry F. Williams.)

Mr. Hokanson: May the record show my objection to the witness' testifying to anything that was said which might vary or contradict his writing or the signature which he placed upon these documents?

Mr. Howard: I am agreeable to that continuing objection in the record, if the Court please.

The Court: The objection is overruled.

Q. Did you understand the question?

A. I understand the question. These documents were made up the night before and the morning that I was going to New York to see Mr. Antippas because there was a strained relation there and I knew it, and I didn't want to hold the ship up, and I signed these documents passing the work.

Prior to this time, I had a talk with Mr. Featherstone and I think Mr. Lindgren—I am not sure whether it was Mr. Lindgren or Harper, one of them, in fact, both together—and I questioned some of the items as high, but [357] knowing shipyard practices, their books weren't all together because they couldn't work that fast, I signed these and left some copies with Mr. Lund at General Steam. One reason I did that was because the General Steam had been paying our bills and Mr. Lund would have had to have any approval before he went on, but it was also understood that I would have to present these bills to Mr. Antippas. Naturally, he didn't give me carte blanche to his pocketbook and spend his money that fast.

(Testimony of Harry F. Williams.)

Q. What was said to Commercial Ship Repair with respect to the approval?

A. Mr. Featherstone at that time said if 75 or 80 per cent of this bill would have been paid, he would have played ball with us and we could have negotiated any dissatisfaction in prices afterwards.

Q. At that time, did you express any dissatisfaction with the prices?

A. I did, to Mr. Lindgren. I considered some of them higher than I really anticipated them to be, but we couldn't reasonably negotiate any price with his books not up to date, because the work progress was faster than his bookkeeping, naturally.

Q. At the time you signed Libelants' Exhibits 4, 5 and 6, did you advise representatives of Commercial Ship Repair that you were not approving the amounts for the charges? [358]

A. I don't know for sure whether I did. I may have said it, I may not have.

Q. Did you have something more to answer?

A. Exhibit 4, in my way of thinking, is not an invoice. It is simply a rewrite on the general contract, and all big yards don't put the prices on the rewrite because they do not want their employees to see the amount of money transacted in the deal. So I don't think that No. 4 should be taken as an invoice. No. 5 and 6, yes.

Q. Let's look at Libelants' Exhibit 4. Did you advise Commercial Ship Repair at that time that

(Testimony of Harry F. Williams.)

you were approving the amounts of the charges shown on that exhibit in behalf of the shipowners?

A. Exhibit 4, I am approving the work in its entirety.

Q. Did you advise Commercial Ship Repair that you were approving the amounts of charges shown on that exhibit?

A. I may have and I may not have. I am not positive.

Q. What if anything was said to representatives of Commercial Ship Repair at that time as to your opinion as to the reasonableness of the charges?

A. I thought that some of the items was a little high. [359]

Q. Did you advise them how much you thought was high?

A. I said approximately $6,000 or $7,000 too high. I informed Mr. Black and Mr. Lindgren and all of them, but Mr. Featherstone at that time made the assertion that if he had 80 per cent of the bill he would play ball with us and sit down and settle the bill fair and square.

Q. Was any breakdown of labor and materials furnished to you or promised to you at that time?

A. At that time there was none, and that is why he could not deal with this bill in its entirety, because his bookkeeping was always behind, as in any other shipyard.

Q. Refer again, please, to Libelants' Exhibit 4. Will you state what particular items on there you

(Testimony of Harry F. Williams.)

considered contained excessive charges?

Mr. Hokanson: I object to the question, your Honor, involving an issue here that the opinion of the witness as to what he considered to be excessive is foreclosed by his signature on the document, which he has already stated he regarded as approving the amounts.

Mr. Howard: I am sorry, counsel. I didn't understand his testimony to be to that effect.

The Court: This is a part of the same objection of the nature previously noted, is it not, barring a written instrument by parol testimony? [360]

Mr. Hokanson: He is asking for the witness' opinion. I suppose he is competent to give it. I will withdraw it on that basis.

The Court: The objection is overruled.

A. I claim that items 1 and 2 and 3 were debatable. That is, we wanted to know some reason for the excess cost by a breakdown.

Q. What did you consider to be the excess charge on item No. 1?

A. Well, it pertained to the engine mostly, and due to the fact that our crew did most of the work on the engines and the yard's performances there was, in my opinion, shop work, testing, rigging, etc., I thought that it was a little high, about $1500 high, that one item, but they had no way of determining at that time, and I will still have to repeat that it was open to negotiation.

Q. Refer, please, to item 2.

(Testimony of Harry F. Williams.)

A. The same would apply to item No. 2.

Q. What excess charge do you believe was involved in that item?

A. Item 2 comprised mostly piping, heating coil lines, and the entire deck and the guards over the deck. It being a small ship and $7930 was the total item, I figured about $1800 should have been taken off that item, but that was also negotiable, and full accounts wasn't in the office. [361]

The Court: May I interrupt you to ask what you mean by saying those items which you are now discussing involved work done by members of the ship's crew?

The Witness: The ship's crew did the engine work in item 1.

The Court: Why would any charge be made to the owners for work done by the ship's crew?

The Witness: The shipyard furnished us machinists and for its machinists they charged in that item. The hours weren't complete. The shipyard took these different valves up to the shop, ground them in, tested them and repacked them and renewed sections of pipe, etc., in the engine room, so there is a lot of men involved here.

The Court: Do you mean that some of the work as to those items was done to some extent by members of the crew of the ship?

The Witness: That is right, sir, and some by the yard.

(Testimony of Harry F. Williams.)

Q. Refer back to item 1 of Libelants' Exhibit 4, please. Will you check through the items shown on the first page of Libelants' Exhibit 4?

A. What do you want me to check?

Q. When you have checked that, will you state whether the work shown on there was performed by the [362] Commercial Ship Repair yard or whether it was performed by the ship's crew?

A. It was done together. The ship's crew assembled and disassembled; the yard made the improvements up in their shops, brought it back and assisted the chief with men as designated in the item.

Q. Again referring to item 1 of Libelants' Exhibit 4, do you find on there an item "install new liners in five cylinders"? A. Yes, sir.

Q. Who did that work?

A. The Commercial Ship Repair Company, up in their warehouse.

Q. Who installed the cylinder liners in the engine?

A. The Commercial Ship Repair machinists, up in their warehouse.

Q. Who installed the liners on the engine aboard the vessel?

A. The Commercial Ship Repair Company lowered them into place and assisted the engineer to bolt them.

Q. Another item under item 1, "furnish labor and material to pull main engine cylinder liners."

(Testimony of Harry F. Williams.)

Who did that work?

A. The Commercial Ship, because we didn't have the strong backs and facilities to do it. [363]

Q. Another item, "furnish labor and material to disassemble camshaft." Who did that work?

A. The crew, with the assistance of Commercial Ship's riggers.

Q. Why was that item left in the specifications if the crew did the work?

A. Because they were involved in there. The Commercial Ship engineer was there because the marks had to be taken off this camshaft so we had the proper timing of the valves when they were brought back, and it was done for the American Bureau for classification.

Q. Referring to the last item under item 1 of Libelants' Exhibit 4, "furnish labor and material to repair circulating system of main engine as necessary," who did that work?

A. The chief engineer had some Commercial Ship machinists working for him, and he also had his crew working for him. The cleaning gang of the yard had something to do with flushing the jackets out and the pipes out, and the pipefitters of the yard had to renew sections of pipe that were frozen or wasted, and the coolers in this particular case were taken off and brought up to the shop.

Q. To whose shop?

A. To the Commercial Ship Repair shop, were steamed out and I believe tested, and witnessed by

(Testimony of Harry F. Williams.)

Mr. Gallagher of [364] the American Bureau.

Q. Did that include the lubricating oil cooler?

A. The lubricating oil coolers were cleaned out, too. The pipefitters assisted our crew in that work.

Q. Who took the lubricating oil cooler off the ship? A. The riggers, naturally.

Q. Will you refer to item 3 of Libelants' Exhibit 4, please, and state what if any excess charge is included in that item?

A. I thought that that was about $500 too high. That is my opinion, now, but I didn't see the breakdown.

Q. How about item 4? A. It is okay.

Q. How about item 5? A. Okay.

Q. Item 6?

A. Item 6 is an electrical item, and there is also electrical items in the main contract, and there is electrical items in installing the direction finder in the ship-shore telephone. Something on the electrical work I did pass an opinion that that was high, but I did not see the breakdown on that.

Q. Did you feel that the charge under item 6 of $2205 was a proper charge?

A. I thought it was very high for what it was, a small [365] fresh water pump motor, two air compressor motors and a fire pump and bilge pump motor which they took up to the shop, baked out, repainted with insulation paint, and the small generator. $2200 for that kind of work without any renewals I thought was a little high, $1000 or

(Testimony of Harry F. Williams.)

$1200 high, for that matter.

Q. How about item 7? Do you consider that charge okay? A. Okay.

Q. Item 8? A. Okay.

Q. Item 9?

A. My owners question item 9, which they justly should, because this pertains to rigging the shrouds and the mast, which is in the main contract, but it reads in the main contract—I haven't got that here, but about all renewals to be paid by the owner. Mr. Antippas has bought many sheaves and sheave blocks and single sheaves, and I consider the item——

The Court: Spell the word sheave.

The Witness: S-h-e-a-v-e, a sheave block.

Q. Please state what you considered to be the case as to whether item 9, a charge of $492, was reasonable.

A. I would rather price this material furnished, and that was all that was done. There is 7 sheaves, a ½ inch [366] wire topping lift and a ½ inch wire purchase fall, and 5 1⅛ galvanized anchor shackles. I would like to know the price of that before I pass an opinion, because I am directed to do that by Mr. Antippas.

Q. Were any prices for those items furnished to you by Commercial Ship Repair?

A. No, the bills were not in. I got out of there in a hurry, see.

Q. Passing now to item 10, how about the charge

(Testimony of Harry F. Williams.)

for that item? A. It is perfect.

Q. You are satisfied with that?

A. Yes, sir.

Q. Item 11? A. Satisfied.

Q. How about the charge on item 12?

A. Perfect.

Q. How about the charge on item 13?

A. They furnished a spool piece on the whistle and raised the whistle, and I would question the price of the spool piece because they built the powerhouse, and I think it was $90 too high.

Q. What is the total charge? A. $158.

Q. You thought it was $90 too high? [367]

A. That is right.

Q. How about item 14, relating to the heating boiler? Is that the Clayton boiler?

A. That is the Clayton boiler.

Q. And the charge on that is how much, please?

A. $5875.

Q. Did you consider that to be a reasonable charge?

A. I consider that a reasonable charge because they installed it and built it and insulated it.

Q. Item 15, is that a reasonable charge for that work? A. Yes, sir.

Q. Item 16, the same question?

A. Yes, sir.

Q. Item 17? A. Okay.

Q. 18? A. Okay.

Q. 19? A. Okay.

(Testimony of Harry F. Williams.)

Q. 20? A. All right.

Q. 21?

A. 21 is lifeboat labor, work on the lifeboats.

Q. What is the amount for that item? [368]

A. $1074.

Q. Did you consider that to be a reasonable charge?

A. I thought that was a little high for what they did. They only furnished two spreaders and a canvas top, and of course they promised to show me the cost of the mast, etc.

Q. Did you ever see the charges of the shipyard on that?

A. Not up to now. I didn't see a recapitulation until yesterday. $874, I marked it, and it is $1074 on the bill.

Q. You thought it was $200 too high?

A. That is right.

Q. As to item 22, did you consider the charge reasonable? A. Yes, sir.

Q. 23, same question? A. Yes, sir.

Q. Item 24, same question?

A. The vents in the poop deck, in the main deck, ABS requirements.

Q. What is the amount for that item as shown in Libelants' Exhibit 4?

A. $585. I think we figured that $485 in my firm's notes. I think it was $100 in excess of what we had [369] estimated.

Q. Item 25, did you consider the charge for that

(Testimony of Harry F. Williams.)

work reasonable?

A. Not for the amount of work there. They charged us $685, and I think I took off $100 and made it $585.

Q. What did that item involve?

A. That was a requirement to ventilate the pump room, because we made a structural change on the bridge. We had to reinstall the new duct and a fan and rewire it so that the pump room would have proper circulation of fresh air. 26, all right.

Q. On item 25, I understand you to say that that charge was $100 too high? A. It was.

Q. Item 26? A. Okay.

Q. Item 27? A. All right.

Q. Item 28? A. All right.

Q. Item 29? A. All right.

Q. Item 30? A. Okay.

Q. Item 31? [370] A. All right.

Q. Item 32?

A. Item 32 comes on the main contract again, and it was an additional awning spreader that they charged $345. I thought that was a little high.

Q. How much high? A. $100.

Q. Item 33, how about the charge for that work?

A. That was a very good job, very reasonable price.

Q. You are satisfied with the price?

A. Absolutely.

Q. How about item 34? A. All right.

Q. Item 35? A. All right.

(Testimony of Harry F. Williams.)

Q. Item 36?

A. According to estimate—the price is $660 on here—according to the estimate, it was only $600.

Q. What work was involved in that item?

A. They furnished material to fabricate and install storage racks along the starboard side of the catwalk.

Q. How many racks were installed?

A. About six, and then two underneath is eight. This covered the ship. The grammar is not right in here. It was all the hose racks that was necessary for the [371] requirements of classification. It was $60 too high. $600.

The Court: I didn't get the relationship of the last two figures used by the witness. First he said it was $60 too high and then he used the term $600.

The Witness: That is the total, sir.

The Court: So it is $60 too high?

The Witness: That's right.

Q. What is the total charge shown in Exhibit 4 for item 36? A. $660.

Q. What excess charge did you consider to be in that item? A. $60.

Q. What would be the reasonable charge for that item? A. $600.

Q. Refer to item 37. Are you satisfied with that charge?

A. The owners woulds like to see the price of those swivel chairs. They charged us $175 for eight

(Testimony of Harry F. Williams.)

swivel chairs.

The Court: Your statement is not responsive. He asked you what your view was.

The Witness: In my view, the price of $175—but I have been asked to get a price on the chairs. I haven't done it.

Q. You have no opinion, then, on the reasonableness [372] of that charge until you have seen the prices?

A. I could not give an opinion because I do not know the cost of the chairs.

Q. Item 38, a charge of $275?

A. I think it was very fair.

Q. Item 39? A. Okay.

Q. Item 40? A. Okay.

Q. Item 41? A. All right.

Q. Item 42? A. All right.

Q. Item 43? A. All right.

Q. Item 44? A. All right.

Q. Referring to item 44, was there any allowance made for salvage on wire or other material removed from the tanker Urania by the shipyard?

A. There was no allowance made because it wasn't specified, and the practices of shipyards, all scrap becomes the property of the shipyard.

Q. Item 45? A. All right. [373]

Q. Do you know what the charge was for the starting motor furnished by the shipyard under item 45?

A. I think I saw the bill for that.

(Testimony of Harry F. Williams.)

Q. Do you know what the charge was for that motor, the purchase price?

A. Not offhand. They have billed us for $195, and I think there is 10 per cent on that for handling. They did not show me the bill.

Q. Referring to item 46, I will ask you the same question as to the charge of $450. Did you consider that a reasonable charge?

A. The original price on the item was $450, but the item was not done in its entirety, so I figured a $200 deduction which would make the item $250, would be reasonable.

Q. As to item 47, there is a charge——

The Court: I do not understand his conclusion as to whether 46 was reasonable or not.

The Witness: 46, the original cost was $450, but the item in its entirety wasn't done, so we took off $200, which made it a total of $250.

The Court: How much too high, if it was too high?

The Witness: $200 too high, but that wasn't their fault. They didn't finish their job, we stopped them.

Q. Did you consider that the charge of $450 was too [374] high for that item?

A. If they had done the job it would have been right, but they didn't do the job.

Q. What do you consider to be a proper charge for the work performed under item 46?

A. $250.

(Testimony of Harry F. Williams.)

Q. Item 47, and the charge of $225?

A. That was cancelled because it wasn't done.

Q. Should that charge be left in Exhibit 4?

A. That should be eliminated, deleted.

Q. The work was not performed?

A. That is right.

Q. Item 48? A. All right.

The Court: How much is included in the account respecting item 47?

The Witness: $225, but the item should have been deleted, because we didn't go through with it. The chief changed his mind.

The Court: That was one of the extras, was it, which was originally ordered but finally abandoned before the work was done?

The Witness: Yes, sir.

Q. Will you please refer to Libelants' Exhibit 6 and the last page of that document? That is the invoice for the [375] spare parts furnished to the tanker by the libelants' yard?

A. That's right.

Q. Do you find an item on the last page dealing with spare boiler coils?

A. Where is it? What is the amount of it?

Q. $900.

A. I see that. That shouldn't have been there.

Q. Why not?

A. Because that should be the boiler complete with a spare.

Q. What relation does that item in Libelants'

(Testimony of Harry F. Williams.)

Exhibit 6 have to item 14 in Libelants' Exhibit 4?

A. That should have been the spare that went with the boiler, as we agreed to do it.

The Court: I think counsel in asking the question is trying to bring out whether or not it is one and the same item.

Q. I will ask the witness, is there any duplication between the charge shown in item 14 of Libelants' Exhibit 4 and the charge of $900 appearing on the last page of Libelants' Exhibit 6?

A. I think that should be taken out of the spare parts, and it belongs with the $5875. I think that was a mistake of the yard, calling that a spare.

Q. Please answer the question. Is there [376] any duplication between those two charges. Is the item of $900 on the last page of Libelants' Exhibit 6, in your understanding, included in the charge of $5875 appearing under item 14 of Libelants' Exhibit 4?

Mr. Hokanson: I object to the question, your Honor, in that it is leading and he is asking the witness' opinion as to whether it is included there, and the writing speaks for itself.

Mr. Howard: I asked his understanding.

The Court: The objection is overruled.

A. Item 14——

The Court: I think you should answer yes or no.

A. No.

The Court: It is not the same?

(Testimony of Harry F. Williams.)

A. It is not the same.

Q. Referring to the item of $900 on Libelants' Exhibit 6 for spare boiler coils, did you consider that to have been a proper charge under your understanding of the work and material that was furnished to the tanker by the libelants' yard?

A. I think it was a mistake. It shouldn't have been there.

Q. Why not?

A. Because we agreed to have a spare coil with that boiler. [377]

Mr. Hokanson: I think the witness should be required to state who agreed.

The Court: Did you agree that the yard would furnish the extra coil without charging you?

The Witness: That is right.

The Court: State whether or not the libelants so agreed at a specified price, and then name it.

The Witness: We agreed on a price of $5875 for the heating boiler with a spare coil.

The Court: What were you charged for the boiler?

The Witness: $5875.

The Court: In addition, you claim you were charged something for the spare coils, namely, $900?

The Witness: I think it was a mistake in the entry in the books. I don't think they intended to put that there. It shouldn't be there, it should be deleted.

(Testimony of Harry F. Williams.)

Q. Why shouldn't it be in there?

Mr. Hokanson: I object to this question. It is leading and asks the opinion of the witness.

The Court: The objection is sustained. I understand what he said.

The Witness: It shouldn't be there.

The Court: He has explained why it shouldn't be there. What was that over-all price for the boiler with spare coils? [378]

The Witness: The boiler itself was $5875, sir.

Q. At the time these invoices and Libelants' Exhibit 4 were presented to you by the libelants' yard on October 8 for signature, did you express to them, to the representative of Commercial Ship Repair, your objections to the charges?

Mr. Hokanson: Objected to as repetitious.

The Court: That is sustained.

Mr. Howard: I have no further questions.

Cross-Examination

By Mr. Hokanson:

Q. You state with respect to item 14 that you agreed to the price of $5875, is that correct?

A. Where is that 14?

Q. No. 14 on Exhibit 4. A. That's right.

Q. With whom did you make that agreement?

A. Mr. Featherstone, when we talked about the boiler.

Q. Did you have authority to enter into an agreement as to price on that item?

A. He gave me the price and I called Mr.

(Testimony of Harry F. Williams.)

Antippas in New York and told him it was going to cost him $5875 for his boiler with spare coil. He said, "What else can we do? Go ahead with it."

Q. You have testified as to Exhibit 4 that [379] in various places, that the item was agreed at such and such a price, but that in your opinion it is too high. Did you in each case arrive at an agreed price where you have stated the item is too high?

A. No, we didn't arrive at an agreed price. We left it open as per our conversation. I took the invoices as they were, signed them, left some with General Steam, and I flew to New York to see Mr. Antippas, because I knew the ship was about to get into difficulty and I didn't want to retard the sailing of the ship. Mr. Featherstone left that open to me and Mr. Black did, too, if a reasonable amount was paid we could have negotiated these prices afterwards, which we could have done.

The Court: What do you mean by the phrase, "I knew the ship was about to get into difficulty?"

The Witness: Mr. Featherstone told me we couldn't take the ship from the yard unless a financial settlement was made some way or other.

The Court: Was anything said about the possibility of libeling the vessel in court?

The Witness: They told me they intended to hold the vessel.

The Court: Specifically, was anything said about

(Testimony of Harry F. Williams.)

libeling the vessel in court?

The Witness: They said they would libel the vessel [380] rather than let it go unless financial arrangements were made to cover their bill.

The Court: What date was that?

The Witness: They told me that just before the sea trial.

The Court: What date was that?

The Witness: You will have to help me on the sea trial date.

The Court: October 4th or 6th? Mr. Howard used both dates in his question.

Mr. Hokanson: Mr. Antippas testified it might have been October 4th or 6th, your Honor.

Mr. Howard: The record will show it was October 6th, your Honor.

Mr. White: I have the log of the shipyard.

The Court: Is that in evidence?

Mr. White: It is not.

The Court: Is there any objection to reading the log entry on that point?

Mr. Howard: I have no objection.

The Court: Read the log entry on that point pursuant to counsel's stipulation.

Mr. White: "Wednesday, October 6, 1948. Urania trial run."

The Witness: It was about October 4 that [381] Mr. Featherstone told me he would not let the ship go out unless there was some security for the bill.

(Testimony of Harry F. Williams.)

Q. Isn't it true, Mr. Williams, that Mr. Black also advised you on or about October 8 before you left that the ship would not be allowed to sail under any consideration unless arrangements were made for payment before sailing?

A. That is right.

Q. Showing you Libelants' Exhibit 7, does your handwriting appear on that document at any place?

A. Yes, it appears on "okays".

Q. That was the work sheet that you and Mr. Lindgren used to talk about these prices, isn't it?

A. No. This is a rewrite used starting to make this (indicating). This shouldn't even be here. That should be in the wastepaper basket.

Q. What does your "okay" signify at various points on the document?

A. The way it is written, the grammar of the item. We added to and took away.

Q. As to prices?

A. Some, yes, some prices.

Q. Some places your signature appears on the figure in the margin, does it not? That is to say, that you wrote the figure in yourself or changed the figure?

A. No, it is all Art Lindgren's figures, I [382] think. Some I took out and some I marked okay, but if you add these figures, they won't make this sum. It is a work sheet. It shouldn't be here.

Q. How close is it to No. 4?

Mr. Howard: If you know.

(Testimony of Harry F. Williams.)

A. I don't know.

Q. If it were established that the total amount listed on that work sheet coincides with the amount shown on Exhibit 4 within $100 or $200, would your testimony still be the same?

A. It is still a work sheet. I haven't okayed it all.

Q. But you did sit down with Mr. Lindgren and go over these prices, did you not?

A. From time to time we did, many times. Some we agreed upon, some we didn't, some we left open. His books wasn't up to date so he couldn't positively assert the prices and neither could I.

Q. Then Exhibit 4 does not contain a complete itemization of all the work that was done, does it?

A. That is right.

Q. So that reference to the numbered items would not disclose to you what the total work done on that item was?

A. Not unless I got some from the yard's recap.

Q. And your estimate of the amount in each case as being too high is just your opinion based upon your [383] recollection of what was done with respect to the particular item?

A. That's right.

Q. You heard the testimony yesterday of Mr. Nordstrom, didn't you?

A. I couldn't hear him.

The Court: In what respect?

(Testimony of Harry F. Williams.)

The Witness: We talked too low.

Q. Did you hear the testimony of Mr. Nordstrom with respect to his opinion as to what percentage would be a reasonable profit on a job of this size?

A. I didn't hear Mr. Nordstrom's testimony because I couldn't hear him.

Q. Assuming that Mr. Nordstrom's testimony was that a 20-25 per cent profit on a job of this character—referring now to the extras—was entirely reasonable, would your opinion be the same?

A. I don't care to pass my opinion on that.

Q. Do you have an opinion?

A. Get as much as you can, is my opinion.

Q. In your experience, do you know how profits run on jobs of this type? A. Yes.

Q. Would you say that 20-25 per cent would be comparable with profits made on other jobs of this type? [384]

A. I don't want to pass my opinion about profits in shipyards, because every yard is different and I am not going—I am not an expert on business accountancy, I am an engineer.

Q. But you have expressed an opinion as to the reasonableness of certain amounts listed here on Exhibit 4?

A. That's right, that is my opinion, my practical opinion.

Q. If it were demonstrated to you that after a complete breakdown as to the items that went into

(Testimony of Harry F. Williams.)

Job Order 678 it was shown that the total profit to Commercial Ship Repair was about 13 per cent, would you say still that the amounts listed here are excessive to the amount that you state?

A. I still don't like to answer the question, because I am not—one man can work for $1 a day and another one for $50.

The Court: I would like for one counsel or both to inquire of the witness concerning the quality of this work. I understand it was part of his duties and part of his assignment to supervise the doing of the work as well as to give orders for extras. I would like for both sides by appropriate questions to inquire of this witness concerning the quality or standard of this work as actually done. That is one of the [385] important issues in this case. I would think this witness would know something about it.

I don't require that any one of you do it. I suggest to you that that is an important issue in this case, and I believe I recall that the burden is on the libelants in respect to that issue.

Mr. Hokanson: I believe, Your Honor, that Mr. Williams has already testified concerning that, but I would like to again develop it with your permission.

Q. Mr. Williams, you supervised the entire job, both contract and extras, did you not?

A. Yes.

Q. You have been in many shipyards during

(Testimony of Harry F. Williams.)

your 30 or 40 years of experience as a surveyor in maritime matters? A. Yes.

Q. You are able from that experience to judge the competency of work done in a shipyard?

A. That's right.

Q. In your opinion, was this work done in a workmanlike and cmopetent manner?

A. It was.

Q. And you approved all the work upon its completion, did you not?

A. Right, and any dissatisfactory work, they did it over and did it to suit me. [386]

Q. It was also approved, was it not, by Mr. Gallagher of the American Bureau?

A. That was necessary for the classification.

Q. Mr. Gallagher was a disinterested party in the proceedings with respect to testing, was he not?

A. He was interested in the testing, all right, he wanted to see that everything was all right.

Q. But he acts as an independent third party to determine whether the vessel meets the requirements of the Bureau's standards?

A. He is an officer of the classification society and he had passed it the same as we did.

Q. Did Mr. Gallagher express any opinion with respect to the competency of the work that was done?

Mr. Howard: I object to that, if the Court please, as being a request for a hearsay statement,

(Testimony of Harry F. Williams.)

a third party. He is asking for what opinion Mr. Gallagher expressed.

The Court: The objection is sustained. He has already said what he did.

Court is in recess until 1:00 o'clock.

(At 12:05 o'clock p.m., Saturday, April 9, 1949, proceedings recessed until 1:00 o'clock p.m., Saturday, April 9, 1949.) [387]

April 9, 1949, 1:00 o'Clock, P.M.

Q. You observed the supervisors who worked for Commercial Ship Repair on the Urania during the conduct of their work, did you?

A. I did.

Q. What is your opinion as to the competency of the supervisors?

A. They were all pretty good men, all the way through.

Q. Referring to item 1 on Exhibit 4, you previously testified that all of that work was done under supervision of the chief engineer except with respect to the rigging, is that correct?

A. Yes.

Q. With respect to the lowering of the liners into the cylinders, do you know whether any additional work with respect to connecting up those cylinders was done by Commercial Ship Repair independently of the chief engineer?

A. It may have been, the lubricating oiling pipes put back, and some of the bolts hardened by machinists.

(Testimony of Harry F. Williams.)

Q. But it was under the supervision of the chief engineer, wasn't it?

A. As far as the main engine, yes. [388]

Q. Turning to Exhibit No. 4, you state that the original price of that item, No. 46, was $450. What do you mean when you refer to the original price?

A. The original price was given to build a storeroom on the starboard forward corner of the engine room over the cargo pump motor, and the storeroom deck to be constructed of diamond floor plate, which was not done.

Q. In other words, that was a price that had been agreed upon before the work was undertaken?

A. Yes.

Q. Between you and who else?

A. Perhaps Lindgren; anyway, I was given a price, how much it would cost to build that storeroom locker.

Q. Are you or are you not qualified to express an opinion as to the reasonableness of the price of work done in shipyards?

A. I think I am capable of expressing an opinion on prices in shipyards.

Q. You have negotiated prices during your work over a period of years, have you not?

A. That I have.

Q. And you have previously worked for Mr. Antippas on jobs where you have negotiated the price, have you not?

A. I have negotiated prices with Mr. Antippas

(Testimony of Harry F. Williams.)

in other work. That is to say, he had the final say-so on the [389] price.

Q. If you are qualified to express an opinion as to the reasonableness of shipyard work, can you testify as to your opinion of the reasonableness of a markup on the extra work on the Urania?

A. These prices were marked up for a basis to get somewhere, and the final decision wasn't made by the man who was going to pay the bill, that is all. The reasonableness was there.

Q. What I want to find out from you is if you can state what a reasonable price is for a specific item of work in a shipyard, then that must necessarily take into account your understanding of what the markup is over the actual cost of labor and material, isn't that true?

A. That is true.

Q. If the evidence should show that the Commercial Ship Repair in the Urania job only had a markup of 12 to 15 per cent on the extra or additional work, would you consider that to be a reasonable markup?

A. I consider it a fair markup, yes.

Q. Isn't it also true that as to the reasonableness of the individual items which you have testified to here on Exhibit 4, it was merely tentative upon a study of the time and material breakdown?

A. That's right. [390]

Q. So that without having the benefit of the actual breakdown of time and material, you were

(Testimony of Harry F. Williams.)

not prepared to make a final statement as to whether those charges that you state were excessive were actually excessive, in your opinion?

A. That is also right.

Q. Referring to Libelants' Exhibit 12, which was prepared by the accountant, Mr. Harper, you will notice that the profit on the extra work and the spare parts was about $5987. Assuming that Mr. Harper's figures are accurate, would that affect your testimony that you have earlier given that the bill was about $7000 high?

A. No, it wouldn't affect my testimony, because when I go over it item for item, this is nothing but a recapitulation of your overhead and costs that I haven't had time to study. There is a lot of debate here.

Q. Assuming, though, that the analysis of time and material and stores is accurate, would that affect your opinion as to the reasonableness of the total charge? A. It may.

Q. The total profit shown there represents something around 13 per cent on the extra work done. Is that a reasonable profit on that work?

A. It is a fair profit. It is a reasonable profit.

Q. Part of your duties on a job such as you undertook here for Mr. Antippas would be to keep the cost of the work [391] as low as possible, wouldn't it? A. That is right.

Q. Isn't it true that you objected to the inclusion of the state sales tax on the invoices with

(Testimony of Harry F. Williams.)

respect to spare parts? A. I did.

Q. And it was explained to you, wasn't it, that that was beyond the control of Commercial Ship Repair?

A. We called up a lawyer and found out that it had to be.

Q. Did Mr. Antippas ever tell you to keep the total bill under $80,000?

A. He never specified any amount to keep it under to me that I know of. He may have said, "Keep it as low as you can," I don't think he ever gave me any designated amount.

Q. So that if he told you to keep it under a certain amount, he contemplated in that statement to you that you would be computing the prices, didn't he?

Mr. Howard: I object to that question because the witness has just testified that Mr. Antippas did not state it be kept to a certain amount.

The Court: He said he didn't remember any such. I believe that the question is not proper conditioning. The objection to it is sustained.

Q. In going over Exhibit 4 again, you have testified [392] that item 47 was not accomplished and should have been deleted?

A. That is right.

Q. Isn't it true that in many instances on this extra work, as you proceeded, Commercial Ship Repair made trades or swaps with you covering various items that had been ordered?

(Testimony of Harry F. Williams.)

A. That's right, they did.

Q. And they extended many courtesies by way of doing special jobs for you which they did not list, isn't that true?

A. They were reciprocated, the courtesies upon both sides.

Q. You have said that in going over the items number by number on Job Order 678, that the great majority of them were "okay", "all right", "very reasonable", in some cases, "perfect". Isn't it possible that in some of those items that you approved the prices might have been very low and might very well have been marked up higher than is shown on Exhibit 4?

A. That is a condition, that is right.

Q. So that it is quite possible that the increase on the prices you have stated to be all right could offset to a great extent the prices that you have stated in your opinion to be high? [393]

A. It is elastic. It could go either way.

Q. Calling your attention to item 14 on Exhibit 4, you will note that the first sentence says, "Furnish and install new heating coils," is that correct?

A. That is correct.

Q. And no mention is made under that item of an extra set, is that correct?

A. That was an omission by the yard. That was understood with Mr. Featherstone and I that this boiler would have the spare coil, which made it a good buy, $5875.

(Testimony of Harry F. Williams.)

Q. But there is no mention in 14 of an extra set, is there? A. No, there isn't.

Q. Turning to Libelants' Exhibit 6, on the last page, there is listed an item of coils for the boiler in the sum of $900, is that right?

A. That is right.

Q. Did you know what the reasonable market value of those boiler coils was at the time they were furnished?

A. No, I didn't look that up in the catalog. The boiler is an obsolete boiler and it was just good luck that the boiler parts were around Washington. They don't make that boiler any more.

Q. You examined Exhibit 4 before you signed it, did you not? [394]

A. Yes.

Q. And you examined Exhibit 6 before you signed it, did you not, covering spare parts?

A. I did, in a rush, but may have overlooked some things.

Q. You at that time made no objection to the omission, as you state, of the item of an extra heating coil on No. 14 of Exhibit 4?

A. I didn't know that it wasn't in there, and I wouldn't think and I don't think that the shipyard would trick me into giving me an extra coil or ducking the issue. I think the agreement I made with Mr. Featherstone is fast and sound and the coil should be with the boiler and this should be deleted.

(Testimony of Harry F. Williams.)

Q. From your dealings with Commercial Ship Repair, as you have stated, you were confident that there was no attempt on their part to hoodwink you by putting something in these extras?

A. No, they wouldn't do it intentionally.

Q. In other words, you think that was an error?

A. I do.

Q. Isn't it true that Mr. Antippas never delineated any limitation upon your authority in connection with the job done at the shipyard at Winslow?

A. As far as the work and ship construction was [395] concerned, he gave me full power to get the ship.

Q. He never stated any limitation upon your authority in the presence of any representative of the shipyard, did he? A. I don't think so.

Q. Would you like, before giving a final opinion as to the reasonableness of the extras, to study further Exhibit 12 and supporting documents?

A. That will take me quite a while.

Q. I will withdraw the question. Didn't you first make the negotiations from New York covering certain spare parts for the main engine?

Mr. Howard: Objected to as repetitious.

The Court: Are you sure you haven't gone into this already?

Mr. Hokanson: I don't believe with this witness, Your Honor.

The Court: You may inquire. The objection is overruled.

(Testimony of Harry F. Williams.)

A. I said in the early part of my testimony the conditions that we went into from New York. I wrote for the catalog to the Union Diesel, and we priced it, and Mr. Antippas knew the price of the things, and we were instructed then to order it through him and his office.

Q. You ordered parts yourself from Union Diesel after you were out here, didn't you?

A. Yes, I did.

Q. With respect to Exhibits 4, 5 and 6 which bear your signature, you were free to note any objection to the amounts thereon before signing them, were you not?

A. I was, but at the time I wanted to get them to Mr. Antippas and let him settle them. After all, he had to pay them, he is entitled to look at something and object, and from then on I would have to be instructed what to do.

Q. You have mentioned in your direct testimony that you were aware of strained relations existing about a week prior to your departure. What did you have reference to in that connection?

A. As the ship was nearing completion, I was told that I couldn't go out on the trial trip unless some financial arrangements were made, and I knew then that it was necessary to get hold of Mr. Antippas in order to carry out the work.

Q. What was the reason for the objection to the trial run and who made it?

A. Mr. Featherstone at first thought that if he

(Testimony of Harry F. Williams.)

would allow me to take the ship out on the trial run, I might get over to Canada and forget to come back.

Q. In view of the information that you had concerning Commercial Ship Repair's attitude toward the payment of this bill, did you communicate that to Mr. Antippas? [397] A. I did.

Q. So that he had knowledge of Commercial Ship Repair's intentions concerning holding this vessel unless the bill was paid?

A. I think Mr. Antippas was so informed.

The Court: On or prior to what date, if you know?

The Witness: It was in September, 27th or 28th, somewhere in there. I don't know whether it was Saturday or Sunday.

Q. Did you tell Mr. Antippas that the ship would be libeled by Commercial Ship Repair if the bill was not paid prior to sailing?

A. I told him that they would not allow the ship to go, because even at a late date, Mr. Featherstone said if he would pay 80 per cent of the money, he would play ball, so I didn't use the word libel.

Q. Were you directed to leave Winslow and go to New York by Mr. Antippas?

A. That I am not sure of. I think I went in the best interests of all concerned. I thought I would get the ship out quicker by bringing these invoices to New York, and it was unfortunate that we didn't meet in time before the ship was libeled.

(Testimony of Harry F. Williams.)

Q. Did you have an appointment with Mr. Antippas in New York Monday morning, October 11, prior to your leaving [398] Seattle?

Mr. Howard: Objected to. I belive that is repetitious, if the Court please.

Mr. Hokanson: I think the testimony was that he met with him on Saturday, the 9th, and I am trying to establish whether he had made this appointment prior to his leaving Seattle.

Mr. Howard: This witness was called by the libelants as their own witness. At that time, I believe they went into the subject fully.

Mr. Hokanson: I don't recall, Your Honor.

The Court: Was that the time when you think this witness testified he saw Mr. Antippas in the restaurant?

Mr. Howard: That is my recollection, going back to when he was examined.

The Court: This witness has at least once, if not more than that, testified about seeing Mr. Antippas in the restaurant. Mr. Antippas also testified to that. It was on Saturday night, I think.

Mr. Hokanson: Yes, Your Honor, but my question relates to whether an appointment for Monday was made prior to the time Mr. Williams left Seattle.

The Court: If that is the point of it, you may inquire. Read the question. [399]

(Last question read by reporter as follows: "Q. Did you have an appointment with Mr.

(Testimony of Harry F. Williams.)

Antippas in New York Monday morning, October 11, prior to your leaving Seattle?")

Q. If you know.

A. I don't know, because it is a corporation. I would have seen his brother or him or somebody else. I went to New York there for results, and I didn't have an appointment before, no, sir.

Q. To refresh your recollection, didn't you advise Mr. Black in his office on Friday, October 8, in Seattle that you had an appointment with Mr. Antippas Monday morning, October 11?

A. I may have said that, yes.

Q. In your testimony on direct examination concerning the amounts and the reasonableness thereof in each case on Exhibit 4, were you testifying from certain notes?

A. I was testifying from a duplicate of 4, which I have marked in my figures.

Q. And those were your own notes?

A. That is right.

Q. Made when, sir?

A. I don't know. I had another one, I think I recopied it. I made notes some time ago, but it was after the ship left, after I left. [400]

Q. Is it your experience on repair work under circumstances similar to those which obtained in the case of the repairs to the Urania, where the chief engineer of the vessel was in charge of repairs to the engine and where upon completion of the repairs and conversion the vessel is approved

(Testimony of Harry F. Williams.)

after sea trial by the American Bureau of Shipping and by the surveyor hired by the owners, that the responsibility for any subsequent defect in the operation of the vessel after it is surrendered to the owners does not rest with the yard which perfected the repairs?

Mr. Howard: That question is certainly quite indefinite, if the Court please, and calls for an expression of opinion by this witness, something he may not be qualified to answer. I object to the question for that reason.

The Court: Is it properly within the scope of the examination?

Mr. Hokanson: I believe there is in issue here the question of the quality of the repairs and whether the work was properly done. The question of the quality of the workmanship is invovled, Your Honor, and to that end I ask the question.

Mr. Howard: I don't believe that subject was opened up on direct examination of this witness at this time when he was called to the stand by the claimant, the quality of the work.

The Court: The objection is sustained, for one reason or another. I will not undertake to state the reason. First, you should develop his experience in determining such questions. It seems to me, even on this cross-examination, under all the circumstances, it would be fair to do that. Ordinarily, it wouldn't be required. In this particular type question, it seems to me to be fair to do that. Ask him

(Testimony of Harry F. Williams.)

something else about his experience in such a testing operation.

Q. You have had experience for many years, have you not, in surveying vessels and finally approving them for owners? A. I have.

Q. For how many years?

A. 30, more than 30 years.

Q. And you have worked with the American Bureau of Shipping during that period, have you not?

A. I never worked for the American Bureau of Shipping. I worked with them.

Q. That was my question. You have been a chief engineer yourself? A. That is right.

Q. You have an unlimited license? A. Yes.

Q. Since 1911 you have had that license?

A. Yes.

Q. You are acquainted with the custom that prevails in repair work of the type here involved?

A. That is right.

Q. And you are qualified from that experience to state what the practice is in respect to the question that I put to you, are you not?

Mr. Howard: Counsel is not asking a question, he is making a statement and asking the witness to answer.

The Court: Instead of the question you asked, specify in respect to what.

Q. In respect of what the practice is concerning the extent of ship repair companies' responsibility covering the repairs made after the approval and

(Testimony of Harry F. Williams.)

inspection has been had and the vessel has been surrendered to the owners?

Mr. Howard: I renew my objection.

The Court: The objection is overruled. You may answer.

A. When the shipyard has finished with their repairs and we go out on a trial trip, all unfinished work or unsatifactory work is found and the shipyard makes good this unsatisfactory work and it is accepted by the American Bureau, I think that ends the contract right there.

Q. And that is the practice so far as you know?

A. It is the practice in a great many building yards.

Mr. Hokanson: You may examine.

Redirect Examination

By Mr. Howard:

Q. This lubricating oil cooler, who did the work on that cooler after it was removed from the ship?

A. It was taken to the powerhouse and was cleaned out, steamed out and tested.

Q. Who did the work on it?

A. Commercial Ship Repair yard mechanics.

Q. Referring to Exhibit 12 again, counsel has asked you to express your opinion as to the reasonablenss of the item of profit as shown on the second job hull 678 and 680. Do you find that figure, $5987.68? Will you look to the left of that figure, under the column marked overhead? What do you find in that figure? A. $10,978.

(Testimony of Harry F. Williams.)

Q. Will you look further left, under labor, and what is the cost of labor under that job?

A. It is 9487 labor hours.

Q. And the cost of that? A. $17,062.15.

Q. Having in mind the cost of that labor on that job and the charge of $10,978 for overhead, would that affect [404] your opinion one way or another as to the reasonableness of the profit claimed on that item?

Mr. Hokanson: I object to the question for the reason that he has not established that Mr. Williams is competent to testify as to the prevailing rates of hourly overhead in this area.

Mr. Howard: I will qualify him on that.

The Court: You may do that.

Q. Were you present yesterday when Mr. Harper of Commercial Ship Repair testified?

A. Yes, sir.

Q. Did you hear his statements at that time as to his claim of what the prevailing rate per man hour for overhead was at his shipyard?

A. I think he said $1.09, if I am not mistaken. I ain't sure.

Q. Refreshing your memory, was it $1.15.7?

A. Something like that, I don't know right off-hand. I am not an accountant and don't profess to be one.

Q. Having in mind also that testimony by Mr. Harper as to his statement as to the prevailing per man hour rate on overhead, will you now answer

(Testimony of Harry F. Williams.)

my question as to the reasonableness of the profit item, having in mind the overhead charge of $10,-978 and the labor charge of $17,062.15?

A. His profit shows one thing, and I don't know — [405] I would rather not answer the question.

Q. State your opinion as to the reasonableness of the charge for overhead on this item, having in mind the cost of the labor involved?

A. It looks high to me.

Q. Have you had occasion to analyze such statements on other jobs previously?

A. I haven't got—I am not familiar with the entire overhead of the yard, how many ships was in the yard at the time, how many men were there. I wouldn't be in a position to answer.

Q. Those items would all have a bearing on it, wouldn't they?

A. They would all have a bearing in my opinion.

Q. You still maintain after examining this Libelants' Exhibit 12 that the charges on Libelants' Exhibit 1 are about $7000 too high?

A. I think so, unless I sit down and figure it out in more time.

Q. Referring to item 14 on Libelants' Exhibit 4 and to the corresponding item of $900 for spare boiler coils on Libelants' Exhibit 6, you were submitting those figures to Mr. Antippas for approval, were you not? A. That's right.

Mr. Hokanson: I submit this matter has already [406] been gone into.

(Testimony of Harry F. Williams.)

The Court: I think so. The objection is sustained.

Q. Did you know that Mr. Antippas talked on the telephone with Mr. Black just before the ship went out on a trial trip?

A. I didn't know it, because I didn't hear it only by hearsay. I might have talked about it to him.

Q. Who told you?

A. Maybe Mr. Featherstone, I don't know.

Q. Do you know whether any arrangements were made for the payment of the bill at that time?

A. No, I do not. He had to establish his own credit, not me.

Q. Do you know how much profit the libelants' accounts showed they made on this job?

A. According to this exhibit, they claim they made a profit of $5987.68.

The Court: That is on the extras?

The Witness: That is right.

The Court: Were you referring to extras when you said you thought the bill was about $7000 too high?

The Witness: That is right.

The Court: Does that amount of profit affect your opinion as to how much, if any, it was too high? Do [407] you think it could be too high if the profit was $5987?

The Witness: No, it couldn't. You have got to be reasonable. You have got to give and take here.

(Testimony of Harry F. Williams.)

Q. As a matter of fact, some of the charges that went into the overhead item might be considered as items of profit?

A. That it right, that may be possible.

Mr. Hokanson: If the Court please, I object to that.

The Court: That is appropriate. The question and answer will stand. If you wish later to ask something further about that, you may do so.

Q. You stated that you considered that it ended the contract when the ship was accepted by the American Bureau of Shipping after a trial, and that was the practice in many yards?

A. That is the practice.

Q. Do you know whether there has ever been claim made against a shipyard for defective work or material even after the ship had been accepted?

A. Yes, sir, latent defects.

Q. That is quite common, is it not?

A. It is common.

Q. So that your statement that the contract was ended [408] would be subject to that qualification?

A. Latent defects, reasonable time, too. You don't have to guarantee it.

Q. So it wouldn't necessarily follow that the shipyard's responsibility was ended when the contract was?

A. For a reasonable time. You should at least make one voyage with good results.

Mr. Howard: I have no further questions.

(Testimony of Harry F. Williams.)

Recross Examination

By Mr. Hokanson:

Q. Relating to Mr. Howard's last question, where the work is done under the supervision of the owner's representative or the chief engineer, and the latent defect involved in the claim is involved in that work, what is the practice with respect to the responsibility of the yard?

A. The latent defect could only be blamed on the yard for material they furnished.

Q. Not on workmanship done under the direction of the chief engineer? A. Yes, sir.

Q. You also stated to Mr. Howard that items of overhead listed on Exhibit 12 might overlap the profit. That is not based on your analysis of the exhibit, is it? A. No. [409]

Q. That is speculation, is it not? A. Right.

Q. If the records are accurate and that overhead picture reflects the true overhead, the profit is not high or unreasonable covering that work, is it?

A. If the yard is satisfied with the profit, it is all right. I am not determining that.

Q. If the figures are accurate, the price is not unreasonable if all they made by way of profit was $5900, is that correct? A. That is correct.

Mr. Hokanson: That is all.

The Court: You may step down.

(Witness excused)

The Court: Call respondent's next witness.

Mr. Howard: Mr. Lund. [410]

STANLEY A. LUND

called as a witness by and on behalf of respondents, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard:

Q. Will you state your name and residence address?

A. Stanley A. Lund, 5816 57th N. E., Seattle.

Q. What is your occupation?

A. I am in the chartering department at General Steamship.

Q. How long have you worked in that capacity?

A. Since 1936.

Q. Were you so employed in the months of August, September and October 1948?

A. I was.

Q. During those months that I have mentioned, did you have occasion to participate in any transactions relating to the tanker Urania?

A. Yes, in the husbanding of the vessel and also transferring funds from New York to Commercial Ship Repair.

Q. When you say husbanding of the vessel, will you explain what is meant by that? [411]

A. That is handling the purchase of stores and anything pertaining to the vessel; in this case, not concerning the repairs except——

Q. In husbanding the vessel, you were acting as agents for whom? A. For the owners.

Q. You are appearing here today under subpoena duces tecum served upon you?

(Testimony of Stanley A. Lund.)

A. Yes.

Q. Have you brought with you your files and records concerning the transactions that you have just referred to in your capacity as agent for the owners of the vessel? A. I have.

Q. Did your company, the General Steamship Corporation, Ltd., take any part, participate in any way in the negotiations relative to the work to be performed on the tanker Urania at the Commercial Ship Repair yard? A. No, we did not.

Q. Did you have any occasion to deal with the representative of the Commercial Ship Repair yard regarding the payment of the account or any portion of the account?

A. We paid them a patrial payment of $25,000. We received a telegram from the owners the day before, and the next day we received it and paid it over to Commercial Ship Repair. [412]

Q. Prior to receipt of that telegram from the owners, had you received any demand or notice or request from the Commercial Ship Repair yard for payment of any portion of the account?

A. No request was made on us for payment.

Q. At any time up to October 15, 1948, was any demand made upon you or anyone in your office, to your knowledge, for payment of the balance due on the account for the repairs to the tanker Urania at Commercial Ship Repair yard?

A. No, there wasn't.

(Testimony of Stanley A. Lund.)

Q. If such demand had been made on your company, would you know about it?

A. Yes, I would.

Q. Will you state, please, what your own responsibility was with respect to the tanker Urania during this period?

A. I handled the operation of it, handling stores and small purchases made, also some parts for the Union Diesel engine, which we paid for on behalf of the owners.

Q. In making such payments or disbursements, did you first obtain approval from the owners in New York?

A. Yes. With respect to those engine parts, we received a letter on the first shipment from Mr. Antippas, and the balance were made on the request of Mr. Williams, [413] whom we understood was to order those parts, and we obtained funds and they were paid through us.

Q. Do you recall having talked with Mr. Black or Mr. Featherstone of the Commercial Ship Repair yard prior to October 14 regarding the threat of a libel on the vessel?

A. Well, I understood that they had discussed the payment, although we had nothing to do with it.

Q. Did you talk with them yourself?

A. Yes. They asked if we had received payment of the balance of the bill, which we had not, and also understood that they would probably libel the

(Testimony of Stanley A. Lund.)

vessel if they hadn't received those funds prior to the expected sailing of the vessel.

Q. Referring to your record, if necessary to refresh your memory, will you please state whether or not you reported the threat of an arrest or libel of the vessel to the shipowner in New York prior to October 14? You may refer to your records.

A. I am sorry, I don't have any record of sending any telegram or teletype. I couldn't say whether we telephoned them before that time. It didn't materialize until the evening, I understand, and the next morning we communicated by telephone and a bond was subsequently put up.

Q. That would be after the vessel had actually been [414] arrested?

A. Yes. I don't recall having communicated with them the day before, because it actually wasn't libeled until late in the evening, I understand.

Q. Do you recall any prior conversation with the owners regarding that matter?

A. One or two days before, of the same matter, but we had nothing to do with the conversations in connection with payment, because that was a matter between the owner and the shipyard.

Q. Do you recall arranging for the dispatch of a surveyor and mechanics to Port Angeles, Washington, after the ship sailed, to make some emergency repairs?

A. Yes, we did. It was reported from Port Angeles that the steering engine had broken down,

(Testimony of Stanley A. Lund.)

and we immediately called Mr. Antippas who authorized us to send workmen.

Q. Can you state what day that would have been?

A. I have it in my records. That was Saturday morning, October 16.

Q. Who arranged for the dispatch of those men to Port Angeles?

Mr. Hokanson: Before answering, I would like to get an objection for the record. If the Court please, any testimony now offered going to subsequent repairs or alleged damages flowing from subsequent repairs to [415] the vessel after it left the yard is objected to on the ground that the vessel was accepted, approved, and responsibility of the libelants terminated upon delivery of the vessel into the owners' hands.

The Court: The objection is overruled.

Q. Do you have the last question in mind?

A. Yes. That was on Saturday morning, October 16, and we telephoned the owners and they approved of these amounts, estimated amounts we gave them for the repairs which were taken care of that day, and the vessel sailed at 8 p.m. that evening. Mr. Clark, James Clark, the surveyor, arranged for the workmen and supervised the work in Port Angeles.

Mr. Howard: Your Honor, with your permission I am taking up this subject a little out of order with this witness with the hope that we can

(Testimony of Stanley A. Lund.)

excuse this witness from further attendance.

The Court: I approve.

Q. State, if you know, how long after the departure of the vessel from the Winslow yard you arranged for the dispatch of personnel from the ship yard to Port Angeles?

A. I would just be guessing at it, but I think it was around noon that they left Seattle. They flew to Port Angeles to save time.

Q. Do your records show the date and hour of departure [416] of the vessel from Seattle or Winslow? A. You mean from Winslow?

Q. Yes.

A. Yes, I have that. I beg your pardon, I don't. It was Saturday afternoon, the 15th, in the afternoon. It was Friday afternoon, I am sorry, and it arrived there on Saturday morning, October 16.

Q. Do I understand you to say the ship sailed Friday afternoon?

A. I believe so. I can determine that, but unfortunately, I believe we gave that information by telephone to the owners and didn't write it.

Q. If the ship sailed Friday afternoon, then when did you receive a request for repairs to the ship at Port Angeles?

A. As far as I recall, it was when we arrived in the office on October 16.

The Court: You mentioned Friday and then you mentioned October 16. There is nothing in those two statements to indicate whether the two are the same.

(Testimony of Stanley A. Lund.)

The Witness: The ship sailed on the 15th, Friday, and it was Saturday morning, October 16, that it was found that the vessel was in need of repairs.

Mr. Howard: If the Court please, I believe we can stipulate between counsel that the ship [417] left the Commerical Ship Repair yard at Winslow —this is the Urania—left on or about 8:30 p.m. on Friday, October 15. Is that agreeable?

Mr. Hokanson: That is agreeable.

Q. What action did you take upon receipt of this request for assistance at Port Angeles?

A. We telephoned the owners and explained what had happened, and I explained to them the approximate cost of the repairs and also the surveyor's fees, and we told them subsequently the cost of it and they told us to go ahead with the work. The men were sent up there right after we were in telephone communication.

Q. What men were sent up?

A. Mr. Clark was called in to supervise the job.

Q. Who is Mr. Clark?

A. Mr. James Clark, the surveyor.

Q. By whom was he employed at this time? Is he an independent surveyor?

A. He is an independent surveyor.

The Court: Called on behalf of the owners of the vessel?

The Witness: Yes.

Q. Did anyone accompany Mr. Clark to Port Angeles?

(Testimony of Stanley A. Lund.)

A. I believe there were two machinists from Commercial Ship Repair, and they went to Port Angeles by plane, [418] arriving there, I believe, in the early afternoon.

(Surveyor fees and repair fees marked Respondent's Exhibit A-5 for Identification.)

Q. Handing you what has been marked for identification as Respondent's Exhibit A-5, can you identify those documents? A. Yes.

Q. What are they, please?

A. It is the surveyor's fees and the repair yard's fees for repair of the vessel at Port Angeles.

Q. I ask you to examine them again and state whether any other items are included in those charges? Is there a charge there for a survey made by Mr. Clark at Winslow, Washington.

A. No.

Q. Please look again at the second page of this invoice. I ask you whether that refers to work at Port Angeles or work at Winslow, Washington?

A. I beg your pardon. That second invoice is the one that was in connection with the Winslow inspection of the vessel.

Q. Who made that inspection?

A. Mr. James Clark.

Q. Do you know the nature of the inspection that was made at that time? [419]

A. My recollection, it was an inspection of the boiler.

Q. At whose request was that made?

(Testimony of Stanley A. Lund.)

A. Mr. Antippas'.

Q. Do you know what the results of that inspection were?

A. We got the results in the report made by Mr. Clark. We got a report from Mr. Clark concerning this survey he made and the work accomplished.

The Court: Where?

The Witness: At Winslow.

Mr. Howard: If the Court please, we took the deposition of Mr. James Clark last week in California, and the deposition is here now. We had a stipulation between counsel at that time that the two exhibits could be added to the deposition at the time the deposition was read into the record up here, of course reserving any rights he has to object to the admissibility of the exhibits. We would like to add those exhibits now.

The Court: To the deposition?

Mr. Howard: They are referred to in the deposition, and I would imagine they should be attached to the deposition for that purpose.

The Court: You may do that. Have they been marked for identification? [420]

Mr. Howard: No, your Honor. They have been given a number for identification in the deposition.

The Court: Have they been marked by this clerk here today?

Mr. Howard: No, your Honor.

The Court: There is nothing before the Court.

(Testimony of Stanley A. Lund.)

Proceed with respect to what you have just attached by paper clip to the deposition.

Mr. Howard: I ask those be marked as exhibits.

The Court: By what identifying mark are they referred to in the deposition?

Mr. Howard: If the Court please, these are referred to in the Clark deposition as Exhibits SF 1 and SF 2 for identification, claimants.

The Court: Which one is which? How can you tell which one of the things which the clerk now has in his hand is one or the other of those?

Mr. Howard: The first set of sheets that the clerk has in his hands corresponds with Exhibit SF 1 in the deposition.

The Court: That one will be marked Respondent's Exhibit A-6.

(Survey report marked Respondent's Exhibit A-6 for Identification.)

Mr. Howard: The next one, if the Court [421] please, consists of one sheet, SF 2.

The Court: That one will be marked by the clerk as Respondent's Exhibit A-7.

(10-18-48 survey report marked Respondents' Exhibit A-7 for Identification.)

Q. Handing you what has been marked for identification Respondent's Exhibit A-6, can you identify that?

A. That is Mr. Clark's survey report on completion of the work, his survey and the work that

(Testimony of Stanley A. Lund.)

was completed at Winslow under his supervision on that boiler.

Q. That corresponds with the invoices you have previously referred to under Respondent's Exhibit A-5 for Winslow work?

A. That covers his work there, yes.

Q. Will you refer next to Respondent's Exhibit A-7? Can you identify that?

A. His report on completion of the work at Port Angeles.

The Court: The same surveyor?

The Witness: The same surveyor, Mr. Clark.

Q. Will you examine the charges shown on Respondent's Exhibit A-5 for these two survey reports, services of surveyor, and state if you can whether or not you consider these reasonable charges for the work performed?

A. Not being a qualified engineer, I couldn't say myself. [422]

Q. Can you state whether the charges included in the invoices contained in Respondent's Exhibit A-5 have been paid? A. Yes, they have.

Q. By whom?

A. By ourselves on behalf of the owners.

Q. Are you able to state when they were paid?

A. Yes.

Mr. Howard: I offer Respondent's Exhibit A-5.

Mr. Hokanson: No objection, Your Honor.

The Court: As I understand it, you originally noted the same objection to that exhibit which you

(Testimony of Stanley A. Lund.)

did to the line of testimony in developing it? It concerns repairs made after the alleged acceptance of the libelants' repair job.

Mr. Hokanson: Yes, your Honor. I want my objection to stand to all of that. With respect to the admissibility of this document, I have no question of it if it can later be proved relevant, but I want to reserve my objection.

The Court: The objection is reserved and the Court's action is subject to it, but the Court does overrule the objection and admits Exhibit A-5 now.

(Respondent's Exhibit A-5 received in evidence.) [423]

RESPONDENT'S EXHIBIT A-5

James D. Clarke
Marine Surveyor

2606 50th S. W. Telephone: AValon 4495
Seattle, Washington

To services of Engineer attending the M/T Urania at Port Angeles supervising repairs to steering gear system	$75.00	$75.00
To expenses of above	$10.35	$10.35
Total		$85.35

Computations O.K.
Received—
Check No. 23332. (Figures in pencil.)
Urania (In pencil).
Approved—(Initialed L. A.)
Rec'd payment, J. D. Clarke (This notation in writing).

(Testimony of Stanley A. Lund.)

James D. Clarke
Marine Surveyor

2606 50th S. W.
Seattle, Washington Telephone: AValon 4495

To M/T Urania and Owners,
c/o General Steamship Corp. Ltd.
1211 4th Ave.
Seattle 1, Washington

To Services of Engineer inspecting certain machinery and boiler items of the above vessel and submitting verbal report of same.....	$50.00	$50.00
To expenses of Ferry to Port of Winslow.....	$ 3.60	$ 3.60
Total		$53.60

Computations—O.K./

Check No. 23332. (Figures in pencil.)

Urania (In pencil).

Rec'd payment, J. D. Clarke. (This notation is in writing.)

Invoice
Commercial Ship Repair

Invoice Date, 10/18/48
Invoice No. 0936
Via (10-2)

Sold to: M/T "Urania" and Owners,
c/o General Steamship Corp.
1211 - 4th Avenue
Seattle, Washington

Description	Price	Amount
Furnish services of one electrician and one machinist to report to M/T Urania at Port Angeles, Washington, to repair steering gear mechanism		
Ordered by J. D. Clark, Acting Port Engineer	172.00	
3% Sales Tax.....	5.16	
Total		$177.16

Computations O.K./

Approved (Initials illegible)

Check No. 23352 (Figures in pencil).

Urania (In pencil).

Stamped Paid 10-29-48. Commercial Ship Repair.

/s/ M. Monson, Bkkpr.

Admitted April 9, 1949.

(Testimony of Stanley A. Lund.)

Mr. Howard: You may examine.

Cross-Examination

By Mr. Hokanson:

Q. Do you recall a telephone conversation with Mr. Black shortly prior to the time when the Urania was arrested under civil process?

A. Yes, I did talk to him.

Q. Mr. Black on that occasion asked you, did he not, whether you had funds on hand from the owners to pay the bill?

A. As I recall it, he did, yes.

Q. Did he ask you whether you would guarantee the bill? A. I believe so, at the time.

The Court: What date, do you recall?

The Witness: I am sorry, I can't recall the date.

Q. This was prior to the libeling of the vessel, wasn't it? A. Yes.

Q. Was it on or about October 13, 1948?

The Court: What day of the week?

Mr. Hokanson: That was a Wednesday, and is the date on which the libel was issued against the Urania.

The Witness: I am quite sure I talked to him on that [424] date about this subject, yes.

Q. Did he advise you at that time that it was his intention to libel the vessel?

A. Yes, he did.

Q. Did you inform him on that occasion that you could take no responsibility for the guarantee-

(Testimony of Stanley A. Lund.)

ing of the bill and that Mr. Black would have to use his own discretion as to any security measures?

A. Yes, that is correct.

Q. You are not certain whether you ever communicated to the Compania Naviera Limitada in New York the information that you had concerning the Commercial Ship's intentions to libel the vessel?

A. I don't recall doing it prior to the time that they actually did libel the vessel.

Q. Do you have records to show the value of the spare parts, the engine parts ordered and paid at the request of Mr. Harry Williams?

A. Is that from the Union Diesel?

Q. Yes.

A. The total is $10,837.13 of the spare parts that were ordered through Mr. Williams, and also from the owners.

Q. Did you disburse funds in payment of those parts upon the approval of Mr. Williams?

A. Yes. [425]

The Court: How much was the payment, if you know?

The Witness: Of the entire amount?

The Court: Of that amount you had in mind when you spoke of paying out funds for engine spare parts upon approval of Mr. Williams.

The Witness: Let me start from the beginning in connection with the spare parts. First we got a letter from the owners saying they had ordered

(Testimony of Stanley A. Lund.)

spare parts from the Union Diesel and had asked us to pay a sight draft on arrival of spare parts. The amount remaining was $6812, which we paid upon the arrival and arranged for the transportation over to Winslow from Seattle. That was the start of the ordering of spare parts from Union Diesel. Subsequent to that, Mr. Williams ordered the parts.

Q. Subsequent to that time, Mr. Williams ordered the parts, to your knowledge?

A. Yes, he did.

Q. Do you know, was the figure you gave of $10,000 the amount you disbursed over his approval?

A. Yes. That includes the spare parts that were ordered from the owners direct.

Q. You have broken down the account to see how much of the items were approved by Mr. Williams?

A. They all were; with the exception of that first [426] one, they were all approved by Mr. Williams, ordered by him and sent to us and subsequently paid.

Q. Referring to Respondent's Exhibit A-5——

The Court: It has been admitted in evidence, the last one admitted.

Q. That contains an invoice marked paid covering services furnished by Commercial Ship Repair, does it not? A. Yes.

Q. What is the amount? A. $177.16.

(Testimony of Stanley A. Lund.)

Q. That covers the services of two specialists from Commercial Ship Repair to Port Angeles to attend the vessel? A. Yes.

Q. Had you received authority from Mr. Antippas or representatives of his company to pay that bill to Commercial Ship Repair?

A. Yes, we had the authority.

Q. You first explained to the company, didn't you, what the character of the bill was and what it covered?

A. Yes, we gave them that information.

Q. And they authorized payment of the bill?

A. Yes.

Q. That was after the vessel had left Winslow, Washington? A. Yes, it was. [427]

Q. Mr. Clark, the surveyor that you called in, was representing you in connection with his survey, was he not?

A. He was employed by us on behalf of the owners to supervise the job.

Q. Referring to Respondent's Exhibit A-6, that document has reference to work on the pump to the Clayton boiler and not the boiler itself, does it not?

A. Yes, his recommendations are in connection with the feed pump.

Q. And not the boiler?

A. That is the item that he said he has found unsatisfactory.

(Testimony of Stanley A. Lund.)

Q. Does it state that the boiler itself is satisfactory?

A. Well, to quote him here, he says, "Clayton heating boiler in operation. Construction of boiler found to be satisfactory."

Mr. Howard: If the Court please, the document will speak for itself.

Mr. Hokanson: I merely want to establish that there has been a loose use of terms, boiler and pump.

The Court: The objection is overruled. Do not read out loud into the record what is in that exhibit, because the exhibit is not in evidence yet. It does not prevent you from stating as of your own knowledge [428] something that may also be found in the exhibit, but you have to do it of your own knowledge and only if it is your own knowledge.

Mr. Hokanson: I have no further questions of this witness.

Redirect Examination

By Mr. Howard:

Q. Can you state the amount, the value of the spare parts furnished and paid for by you which were obtained or ordered by the owners?

A. The items that were ordered by the owners were covered in their letter to us. The amount that we disbursed was $6812, plus a transportation charge, I believe it was, of $5.90.

Q. Do you have a figure there for the amount of spare parts ordered by Mr. Williams that were paid

(Testimony of Stanley A. Lund.)

for through your office?

A. The entire amount was $10,837.13, less that last one.

Q. It would be the difference between the two?

A. Yes.

Q. Was authority obtained first from the owners at New York before payment of the latter amount?

Mr. Hokanson: I object to that as going [429] beyond the scope of redirect. He has covered that in his direct examination.

Moreover, he is leading the witness.

The Court: Sustained.

Mr. Howard: I have no further questions.

Mr. Hokanson: No further questions.

The Court: Step down.

(Witness excused.)

The Court: At this time we will take a short recess.

(Recess.)

Mr. Howard: We have one more witness that we would like to call in answer to the libel, and as soon as I found out that the Court was to hold a session on Saturday, I undertook to contact that witness and found he had left town for the week-end, but we expect to call him on Monday.

The Court: I am very much opposed to delay in any part of the trial on account of such matters as that. It is up to counsel to have the witnesses in attendance.

Mr. Howard: Your Honor, I had planned for an adjournment from Friday over to Monday. We

hadn't planned on a Saturday session, and the witness wasn't notified to appear on Saturday, so I would like to [430] hold this part of the case open on behalf of claimant until we can proceed on Monday. I can proceed with the cross libel.

The Court: You may proceed.

Mr. Howard: I believe libelants have one witness present now as a rebuttal on the libel that they may wish to call at this time so that that witness can be excused.

The Court: How is the rebuttal going to be completed as to that witness if you still have another witness in the defense of the libel to call?

Mr. Howard: That is up to the libelants. They indicated they might wish to call that witness this afternoon. I was only giving them that opportunity if they desire to do so.

Mr. Hokanson: In the interest of keeping the record straight, I can call this witness on Monday at the conclusion of Mr. Howard's case.

The Court: I think that is better. Proceed.

Mr. Howard: At this time, we have already eliminated the item with respect to the tools reported to have been stolen from the ship. We would also like to waive and remove from the cross libel item 9 on page 3, dealing with miscellaneous corrective repairs at Long Beach, $3214, as to which we will not present [431] any testimony at this time.

(Opening statement made by counsel for cross libelants.)

The Court: Do you wish to make any responsive statement?

Mr. Hokanson: May it please the Court, the cross respondents will reserve their statement with respect to the cross libel until the conclusion of the case put on by the cross libelant.

So that my understanding may be clear, Your Honor, is it now the state of these proceedings that the cross libelant may proceed with the evidence in support of his cross libel, putting over until Monday the conclusion of his defense to the libelants' case in chief?

The Court: That will be permitted.

Mr. Hokanson: One other point on which I am not clear from Mr. Howard's statement is with respect to item 9 of the cross libel, which he indicated was being deleted, but qualified his statement to that effect by saying that no testimony as to that item would be offered at this time.

The Court: Do you wish to strike that item?

Mr. Howard: Yes, I do, Your Honor.

The Court: Let the record show that item (9) on [432] page 3, being part of the allegations in paragraph IV of the cross libel, is stricken and withdrawn.

Mr. Howard: I would like at this time to read into the record the deposition of Captain Andreas Beis.

(Testimony of Stanley A. Lund.)

The Court: You may do that. Does that comprise all of the cross libelant's depositions taken?

Mr. Howard: No, Your Honor, there are numerous other depositions taken which we have to read.

Mr. Hokanson: May it please the Court, Mr. Todd of our office will respond to the questions. May the record show that the cross respondents at this time object to the introduction of any evidence —I will reserve my objection until the questions are read.

The Court: Can you not agree to waive the formal parts and start reading the deposition?

Mr. Howard: It is agreeable to me.

The Court: Do that. There is no objection to the taking of the deposition, is there?

Mr. Hokanson: No objection.

The Court: Proceed to read the deposition.

DEPOSITION OF CAPTAIN BEIS

(Mr. Baillie acting as New York correspondent for claimant and cross-libelant; Mr. Silverthorne acting as New York correspondent for libelant and cross-respondent.)

Direct Examination

By Mr. Baillie:

Q. Captain, what licenses do you hold?

A. Master's license.

Q. Is that Greek and Panamanian?

A. I have two licenses, Greek and Panamanian.

(Deposition of Captain Beis.)

Q. Will you tell us what your experience has been?

A. Well, I have sea experience.

Q. When did you first go to sea? A. 1925.

Q. And what did you sail as?

A. You mean the first time?

Q. Yes. A. The first time as deck boy.

Q. And after that did you continue going to sea until the present time? A. Yes.

Q. When did you become an officer?

A. 1933.

Q. And what license did you have then?

A. Second mate.

Q. Did you obtain a first mate's license?

A. After that in 1939.

Q. And when did you obtain a master's license?

A. 1940.

Q. On what ships were you sailing?

A. Well, before the war Greek ships under the Greek [434] flag; and during the war I was working for the War Shipping Administration, being on American boats second mate and chief mate.

Q. What types of ships were those?

A. During the war, Liberty ships.

Q. Have you at any time sailed on diesel powered ships?

A. Before that no, only sailing ships; before when I was young.

Q. During the war did you sail on cargo ships?

A. Cargo ships.

(Deposition of Captain Beis.)

Q. On tankers? A. Tankers.

Q. How long have you been sailing for Compania Naviera Limitada?

A. Since the end of 1946.

Q. How long have you been sailing as master?

A. Well, 1946 S. S. Pinta and motor tanker Urania.

Q. Now, Captain, in July 1948 did you receive instructions from your employers to proceed to Seattle? A. That's right.

Q. And take command of the motor tanker Urania? A. Yes.

Q. And the company had just acquired the ship, had it, had just bought the ship?

A. They had bought the ship, that's rght.

Q. And you took delivery from the United States Navy, [435] is that correct? A. Yes.

Q. Now can you give me a general description of this ship, and the type of ship it was?

A. She was a Y. O. 73 Navy tanker.

Q. And do you have any idea of her dimensions?

A. She was a good ship.

Q. Her dimensions, her size.

A. Oh, her size. I got my logbook, I don't know if I remember that.

Q. Captain, I show you this book purporting to be the logbook of the M/T Urania. A. Yes.

Q. And I ask you if that is the smooth log of the M/T Urania? A. This is the smooth log.

Q. Is that right, Captain?

A. That's right.

(Deposition of Captain Beis.)

Mr. Silverthorne: At this point I would like to inquire what the dates are you are referring to in the logbook.

Mr. Baillie: At the present time I am introducing the whole logbook.

Mr. Silverthorne: And what date does it start with?

Mr. Baillie: This smooth log covers from the date of July 29, 1948 to December 4, 1948. [436] I will withdraw my statement that I was offering it in its entirety. The captain left the ship on November 14, 1948. I offer therefore only such part of it as covers the period during which Captain Beis was master of the M/T Urania.

Mr. Silverthorne: I object to the introduction of any part of the logbook which covers the period from October 13, 1948 on, since this litigation or this action was commenced on October 13, 1948 by the filing of a libel, and my objection is grounded on the basis that any records prepared after that time would be selfserving, since they were prepared after the time the litigation was commenced. ''

Mr. Hokanson: May it please the Court, where objections are made I feel that the Court should rule upon them.

The Court: Do you wish it understood that everywhere an objection is made you insert it again and wish the Court to rule upon it?

(Deposition of Captain Beis.)

Mr. Hokanson: It is hard for me to say at this moment. I will take the stand and read the answers. [437]

The Court: I think you should take the stand. Turn to page 6.

Mr. Hokanson: Your Honor, I would like a ruling on the objection registered by Mr. Silverthorne.

The Court: What is the basis of the objection?

Mr. Hokanson: That the document is self-serving.

The Court: It is a logbook.

Mr. Hokanson: Yes, covering entries made subsequent to the institution of litigation.

The Court: Do you object that it is not made in the ordinary course of business, or as a logbook should be kept?

Mr. Hokanson: That is not the basis of the objection.

The Court: The objection is overruled. Is this the official logbook?

Mr. Howard: Yes, it is, Your Honor.

The Court: Has it been so established by the evidence?

Mr. Howard: The next question, Your Honor, establishes that, I believe.

The Court: The objection is overruled. The official logbook, of course, is always admissable in evidence on any material point. [438]

(Deposition of Captain Beis.)

"Mr. Baillie: I ask that it be marked for identification.

(Marked Respondent's Exhibit A for Identification.)

Q. Captain, is this logbook up to the time you left the ship in your own handwriting?

A. That is my own handwriting (indicating), all this."

Mr. Howard: At this time I will offer the logbook in evidence. It is marked in this deposition as Respondent's Exhibit A for identification.

The Court: Let it be marked Respondent's Exhibit A-8 for identification.

(Smooth log of M/T Urania marked Respondent's Exhibit A-8 for identification.)

Mr. Hokanson: Let the record show my objection.

The Court: It is now received in evidence, the objection thereto being overruled.

(Respondent's Exhibit A-8 received in evidence.)

"Q. You are pointing to a page that happens to be open. [439] Will you examine the log and tell me how much of it is in your handwriting?

A. Yes, from here to here (indicating).

Q. That is from the beginning to the date November 11, 1948? A. That's right.

Q. In preparing the smooth log from what

(Deposition of Captain Beis.)

source do you obtain your information to write in the smooth log? From what source do you obtain the information that is written in the smooth log?

A. This is the rule, the smooth log book.

Q. Yes, I know, but you have copied that from somewhere.

A. From the rough logbook.

Q. And as I understand it your rough logbook is kept aboard the ship, is that correct?

A. That's right.

Q. And you make what? An exact copy?

A. Exactly what the rough logbook has, the same thing.

Q. And is your rough logbook kept in English or in Greek?

A. Well, the chief mate don't speak—sometimes he write in English and sometimes he write in Greek in the rough logbook.

Q. In other words the rough log is kept both in English and in Greek? A. Yes. [440]

Q. And when you make out the smooth log you translate it? A. That's right.

Q. Is that correct? A. Correct.

Q. And you make an exact translation?

A. An exact translation of the log.

Q. Now let us come back to the dimensions of the ship. Did you find them in here at all?

A. The dimensions?

Q. Yes.

A. No, I couldn't find that yet. It was 166——

(Deposition of Captain Beis.)

Q. If you are not sure we will get that from another source. A. I don't remember.

Q. In any event she was a small tanker. How many cargo tanks did she have?

A. Four port and starboard.

Q. In other words eight in all?

A. Eight in all.

Q. Now Captain, the logbook shows that you took delivery of the ship at the Foss Launch Tug pier in Seattle? A. That's right.

Q. When you took delivery did you have a full crew aboard her? A. Yes, sir.

Q. And will you tell us of what ratings and officers the crew consisted, on a ship of this size? How many [441] deck officers?

A. Two deck officers.

Q. A chief mate and a second mate?

A. Chief and second mate, and boatswain, 4 A Bs.

Q. And below decks?

A. 4 engineers, 1 wiper, a cook, steward, messman.

Q. How about oilers? A. No oilers.

Q. Only one wiper?

A. One wiper. Well, he was working daytime 8 hours.

Q. You had not other unlicensed personnel in the engineroom? A. 4 engineers.

Q. Licensed? A. Licensed, that's right.

Q. Of course she is a diesel?

A. Diesel engines, yes.

(Deposition of Captain Beis.)

Q. Can you give us some idea of the experience of the other licensed personnel on board the ship?

A. You mean the——

Q. For instance the chief mate, do you know what his experience had been?''

Mr. Hokanson: That is objected to as hearsay, involving a hearsay answer. [442]

Mr. Howard: This witness might very well know what the experience of the chief engineer had been from personal knowledge.

The Court: The objection is overruled.

''A. Yes, he was about 13 years chief mate.

Q. And the second mate?''

Mr. Hokanson: Same objection.

The Court: Overruled.

''A. Oh, he was an experienced man.

Q. And how about the engineers? Did you know anything about their experience?

A. Yes, the engineers they were—the chief engineer was many years on Italian ships, Rumanian ships, English [443] ships.

Q. How about the other engineers?

(Deposition of Captain Beis.)

A. They were from the Greek Navy, good engineers."

Mr. Hokanson: I move to strike the last part of the statement as not responsive and involving a conclusion of the witness.

The Court: The objection is overruled and the motion denied.

"Q. Now the log shows that you were at the Foss Launch Tug pier until August 5, 1948.

A. Yes.

Q. And that then she proceeded to——

A. Winslow.

Q. To the Commercial Ship Repair yard, is that correct? A. That's right.

Q. And that she stayed at the Commercial Ship Repair yard until when?

A. October 15th or something like that, or 16th. It was Friday the 15th or 16th.

Q. Yes, that is correct. She sailed on the 15th of October. [444]

Mr. Silverthorne: You read that from the logbook?

Mr. Baillie: From the logbook, yes.

Q. During that period that she was at the Commercial Ship Repair yard what was being done to the ship?

A. Well, the first thing they started to clean tanks.

(Deposition of Captain Beis.)

Q. Speaking generally what was being done? Was the ship being put in condition? A. Yes.

Q. And undergoing repairs? A. Yes.

Q. Did you have anything to do with the drawing up of the specifications for repairs?

A. Well, we have that what we call the engineer from the office.

Q. But you yourself had nothing to do with drawing up the specifications?

A. Well, I must see the specifications and the report every day, to see if they are doing right, and then I have to go to the Commercial—to the Manager of the yard."

Mr. Hokanson: Move to strike that as not responsive.

The Court: The motion is denied. [445]

"Q. I am talking about before the work began.

A. Oh, before the work began.

Q. Did you have anything to do wth preparing the specifications? A. Oh no.

Q. Now you had a crew aboard the ship while she was in the yard, is that correct?

A. That's right.

Q. Will you tell us what work that crew was doing, if any, during the time the ship was in the repair yard?

(Deposition of Captain Beis.)

A. Well, they cleaned, tested the hull, chipping and painting the deck, that is all.

Q. That is above the waterline?

A. Yes, from the waterline to the top, painted the ship. We cleaned first and then painted the ship.

Q. You are talking now about the deck personnel, is that correct? A. That is correct.

Q. Do you know what the engineroom personnel did?

A. Well, they were working, too; I don't know what kind of work they were doing.

Q. That didn't come under your jurisdiction, is that right? A. No, it did not.

Q. Now in painting the hull of the ship above the waterline did the crew paint any Plimsoll marks port and [446] starboard side?"

Mr. Hokanson: At this point, for the record I would like to interpose an objection to any testimony which is here given relating to the conversion and repair work accomplished by Commercial Ship Repair on the ground that the evidence shows that all of the work was accepted and approved by the owners prior to the sailing of the vessel, and that any objection relating to the qualifications or competency of the work done in the yard have been waived by the owners in accepting the vessel, and the claimant corporation is estopped now to seek

(Deposition of Captain Beis.)

damages by way of alleged deficiencies or defects in the accomplishment of that work.

That objection goes to any testimony along that line hereafter, and rather than interrupt from time to time, may the record show my continuing objection?

The Court: Is there any objection to that arrangement?

Mr. Howard: No objection.

The Court: That arrangement is approved.

At this time, the objection is overruled and where objection is to the same effect, unless the Court at some [447] particular place in the testimony indicates otherwise, the ruling of the Court is the same and will be the same.

"A. That is right, and also the name of the ship at the bow.

Q. Was anything done by the repair yard to the cargo tanks? Was any work done by the repair yard to the cargo tanks?

A. Well, they started—I mean they cleaned the tanks. I don't know if the people who were working in the tanks belonged to the yard.

Q. I mean any work that was done to the cargo tanks was done by repair yard personnel, or people employed by the repair yard?

A. Well, I don't know. I think they hired other companies.

(Deposition of Captain Beis.)

Q. I am not interested in the relationship of the men who did the work. I am interested in what work was done.

A. You mean on the tanks.

Q. The cargo tanks aboard the ship, Captain.

A. Yes.

Q. Was anything done to those tanks?

A. They cleaned the tanks. [448]

Q. They cleaned the tanks? A. Yes.

Q. Did you inspect the tanks after that?

A. Yes.

Q. And what did you find?

A. I found oil, not cleaned good; and then I reported to the Manager of the yard the tanks not clean, and he answered me, "That is all we can do."

Q. And after you reported that to the Manager of the yard nothing else was done, is that correct?

A. That is right.

Q. Now did the repair yard people refit and rig bulwark stanchions at the port and starboard sides of the main deck? A. Yes.

Q. Did they do work such as that?

A. Yes, they did the work but they put the old wire on that."

Mr. Hokanson: That is objected to as not responsive.

The Court: Overruled.

(Deposition of Captain Beis.)

"Q. They left the old wire on that?

A. Yes, because they should change the wire."

Mr. Hokanson: That is objected to as involving a conclusion of the witness.

The Court: It is not ideally stated and it may be that under some conditions an objection like that should be sustained, but this is a deposition. The objection is overruled.

"Q. Now, did the repair yard do work on the ballast tanks?

A. That's right; the ballast tanks, yes; they changed them to make fuel oil tanks.

Q. They changed the ballast tanks to fuel oil tanks?

A. Yes, but they didn't make a good job.

Mr. Baillie: We will cover that later, Captain.

Mr. Silverthorne: I will object to that, not just on form; it is not responsive, and I ask that it be stricken out."

Mr. Hokanson: That is objected to on the ground that it is not responsive and involves the opinion of the witness, who the record shows was not qualified to answer [450] since the work was not under his supervision. The record shows that the work was under the supervision of Mr. Williams, a surveyor hired by the owners.

(Deposition of Captain Beis.)

The Court: That part of the statement, "but they didn't make a good job," is stricken from the answer and the Court will disregard it.

"Q. Did the repair yard do work on the navigation lights? A. That's right.

Q. And other lights of the ship?

A. That's right, yes.

Q. Did the repair yard do work on the ship's whistles? A. That's right.

Q. Now there was an ammunition storeroom on the ship, is that correct? A. Yes.

Q. Was anything done to the bulkhead at the forward ammunition storeroom?

A. No, they didn't do nothing.

Q. Did the repair yard do work on the plumbing and heating fixtures? A. That is right.

Q. By the way, this is all work that you observed? A. That is right.

Q. During the time the work was being done you were aboard the ship at all times? [451]

A. Yes, all the time.

Q. Now, did the repair yard install crew's quarters aboard the ship? A. That's right.

Q. Can you tell us when that work was done during the time that the ship was at the repair yard? A. Do you mean all the job?

Q. No, the work on the crew's quarters? The ship was in the yard from August through to the middle of October? A. That is right.

(Deposition of Captain Beis.)

Q. When was the repair yard working on the crew's quarters? A. Till the last day.

Q. Did the repair yard do work on the ship's refrigeration? A. Yes.

Q. Did the repair yard do work on the exhaust blower of the galley? A. That's right.

Q. Did the repair yard do work on the anchor windlass? A. That's right.

Q. Now when you took delivery of the ship did you inspect the lifeboats on the ship?

A. When they delivered the ship?

Q. When they delivered the ship from the Navy?

A. From the Navy, yes.

Q. Were there any missing floor boards? [452]

A. No, there were all the boards.

Q. Now, Captain, during the time the ship was in the repair yard did you object to any of the work that was being done by the repair yard people?

A. Well, some jobs had been done but some jobs no.

Q. Did you point out to any of the repair yard employees any work that you found had not been done properly? A. Yes.

Q. How frequently did you make such reports?

A. Well, when I saw the job was no good; when I saw the job was no good then I went and told the foreman, and the foreman went and told the manager of the yard, "This job they didn't do good."

Mr. Silverthorne: I object to any further testimony on this line, because the answer is not respon-

(Deposition of Captain Beis.)

sive. I have no objection to your question, but I don't think the answer is responsive."

Mr. Hokanson: I am registering the same objection as Mr. Silverthorne, and ask the Court to rule upon it.

The Court: Overruled. [453]

"Q. After the ship sailed from the repair yard did there come a time when you wanted to shift ballast aboard the ship?

A. We didn't shift any ballast.

Q. You did not?

A. No, we did not. We loaded the ship a couple of times and then we discharged the ship.

Mr. Silverthrone: I object to any further statement along this line, because I think he has given you an answer to your question so far, he said no.

Mr. Baillie: Perhaps I can get at it another way.

Q. When the work was completed, Captain, what orders had you from the company?

A. To proceed to Cristobal for orders.

Q. To proceed to Cristobal for further orders?

A. Yes.

Q. You were proceeding in ballast, is that correct?

A. Well, we had some ballast on board, yes.

Q. And you sailed from the repair yard on October 15th according to the log?

(Deposition of Captain Beis.)

A. October 15th, yes.

Q. Will you keep this logbook in front of you, Captain, and refer to it as you may need to refresh your [454] recollection. Was your voyage from Winslow where the ship had been repaired, to Cristobal, interrupted at any point?

A. What point do you mean?

Q. Did you or did you not have a breakdown shortly after leaving the repair yard?

A. The first place was at Port Angeles on account of steering gear.

Q. And according to the log when was that?

A. A few hours after we left.

Q. Don't you have it there on the day you sailed?

A. We sailed 3:30 a.m. October 16th.

Q. And will you describe what happened, please?

A. Well, we had a pilot on board when we left to Port Angeles, because we got a pilot out to Port Angeles, and before we were about six miles outside of Port Angeles it happened that the steering gear broke down. Then we used the emergency steering gear and we entered to Port Angeles anchorage and dropped the anchor.

Q. And did you there repair the steering gear?

A. Then I called the office of the General Steamship Company at Seattle.

Q. And what was the General Steamship Company?

A. The agent of the owner of the ship, so they

(Deposition of Captain Beis.)

called up the yard and they came by plane, the manager of the yard, that foreman of the yard and two electricians, and the port [455] engineer, Mr. Slarkie, the port engineer of the General Steamship Company.

Q. Can you tell us from your log how long you were at Port Angeles?

A. We left Port Angeles—we left the pilot 20 after 8 p.m.

Q. On what date? A. The same date.

Q. In other words this trouble occurred at 3:30 in the morning? A. That's right.

Q. And you resumed your voyage?

A. 20 after 8 the same day, p.m.

* * *

Q. Could you describe for us what type of steering gear the ship had?

A. No, I don't know anything about that.

Q. What was up in the wheelhouse, Captain?

A. In the wheelhouse we had a wheel and the other electric—what you call the other one, the telemotor.

Q. And you don't know how the two of them operated to steer the ship?

A. Well, the first one was with the telemotor at the breakdown.

Q. What are you talking about now? The handle that [456] you use to steer, is that the one you are talking about?

A. No, the other one, the wheel we used the first

(Deposition of Captain Beis.)

time. When it broke down we used the other one with the handle.

* * *

Q. Now, did you observe when or shortly after you took delivery of the ship, indents in the hull of the ship, or the deck plating?

A. Yes, they got indents. Outside in the hull you mean?

Q. In the hull.

A. In the hull outside, port and starboard.

Q. You did observe indents? A. Yes.

Q. Did you observe those same indents after the ship [457-8] left the repair yard?"

Mr. Hokanson: At this point I will object on the ground that this witness has previously testified that he had nothing to do with the specifications for repairs, and consequently any testimony that he gives here with respect to indents on the hull is not competent since it is not established by him that those matters were to be akten care of.

The Court: The objection is overruled.

"A. That's right. They fixed only one.

Q. Now, was a gangway supplied by the ship-yard? A. That's right.

Q. Was there any place to stow the gangway provided? A. No.

(Deposition of Captain Beis.)

Q. When not in use what did you do with the gangway? A. I don't get that.

Q. When you were not using the gangway what did you do with it?

A. Well, we secured it some place. We secured that with ropes. I didn't have any place to store that." [459]

* * *

Q. Captain, after the difficulty with the steering gear and while you were proceeding on to Cristobal did you have any further trouble? A. Oh, yes.

Q. Will you refer to your log and tell us when that was and what it was?

A. Yes (consulting logbook), it was October 26th.

Q. And what happened?

A. Well, the chief engineer reported to me that it was necessary to stop the engines.

Q. Did he tell you what was wrong with the engines?

A. Well, not yet, because he said, "I have to change the oil," something like that; the oil was—after some hours running the engines they had to change the filters, and afterwards he reported to me that he discovered that two gears had galled. I have my position here.

Q. Where was the ship then?

A. That time?

Q. At that time.

A. Outside of the West Coast of Mexico. [460]

(Deposition of Captain Beis.)

Q. And when he reported this to you what did you do? When the chief engineer reported this condition to you what did you do, what action did you take?

A. Well, I called up the office.

Q. You called up the office? A. Yes.

Q. How did you call up the office?

A. By ship radio telephone.

Q. And what did the office tell you to do?

A. Well, the office told me to fix temporarily and then proceed to Los Angeles for further fixing.

Q. By the office you mean the office of the company, is that right?

A. The company, that is right.

Q. And did you proceed to Los Angeles?

A. No. Well, I told the chief engineer, "Try your best to do something till to go to Los Angeles for fixing," so he tries his best. Well, he said to me, "Maybe we go dead slow—slow," something like that; but after some hours he reported to me he can't give guarantee for his engine to go to Los Angeles, and if we get any place to proceed down here in Mexico to fix it, I mean the gears, because we didn't have on board spare gears."

Mr. Hokanson: I move to strike all of the answer after [461] the word "No." It is not responsive.

(Deposition of Captain Beis.)

The Court: It is granted. It is stricken and the Court will disregard it.

"Q. And then where did you go?

A. So I was about 70 miles outside of Manzanillo.

Q. And did you proceed to that port?

A. Yes. I proceeded to Manzanillo.

Q. When did you arrive there?

A. I arrived at Manzanillo 7:30 in the morning of October 28th at the pilot station; so I had a telegram from the office that they sent a service man from the Union Diesel Company with spare parts of the gear, I don't know what. He came by plane from Oakland, California."

Mr. Hokanson: I move to strike all but the first portion ending with the semi-colon on the ground that it is not responsive.

The Court: It will have to be stricken. It is so ordered.

"Q. And did he make repairs there"? [462]

Mr. Hokanson: I move to strike the question, I object to the question on the ground that it does not relate to anything, the previous part of the answer having been stricken.

(Deposition of Captain Beis.)

The Court: I hardly think so. That will stand.

"A. Well, he came aboard and take those two galled gears and put new ones in, I mean gears, and fixed a temporary job to proceed to Los Angeles to see what happens. He came aboard the ship at Manzanillo and he put new gears in to make a temporary job till to go to Los Angeles."

Mr. Hokanson: That is objected to as involving the conclusion of the witness with respect to what the engineer was doing and what his purpose was.

The Court: The objection is overruled.

"Q. In order to get to Los Angeles?

A. That is right.

Q. On the 5th of November did it break down again?

A. Yes, because we called the Coast Guard; something like that; it broke down. [463]

Q. When it broke down what did you do about it? Could the ship proceed under its own power?

A. When?

Q. When it broke down, could the ship proceed under its own power?

A. Well, we had on board that Union Diesel man, Mr. Cross, and he said to me, 'Well, every few

(Deposition of Captain Beis.)

hours we can run about half an hour only to keep on the course.' "

Mr. Hokanson: That is objected to as hearsay and not within the knowledge of the witness.

The Court: That will have to be granted.

"Q. And did you proceed under your own power?

A. No; and then they sent a tug for us, to tow us.

Q. And a tug towed you in?

A. That's right. On November 6th the tug came alongside.

Q. How long did it take to tow you into Los Angeles? When did you arrive in Los Angeles in tow of the tug?

A. On the 11th of November; from the 6th of November to the 11th of November.

Q. I show you what purports to be an invoice of [464] Pacific Tow Boat & Salvage Company, and ask you if that is your signature which appears thereon? A. That's right, sir.

Mr. Baillie: I ask that this bill be marked as Respondent's Exhibit B for Identification.

Mr. Silverthorne: I will object to the introduction of that bill on the ground that it is self-serving.

(Deposition of Captain Beis.)

(Marked Respondent's Exhibit B for Identification.)"

Mr. Hokanson: The objection made by Mr. Silverthorne is renewed at this time.

The Court: Proceed. You are not asking the Court to do anything with the exhibit, and the objection relates to the exhibit.

Mr. Howard: The exhibit will be offered later.

"Q. I believe you said, Captain, that you arrived in Los Angeles on November 11th?

A. Yes, sir.

Q. And that you left the ship on November 14th, is that correct? [465]

A. November 14th, that's right.

Q. Were you there during the time that any further repairs were being done to the ship?

A. Yes.

Q. Can you tell us generally what was being done?

A. Well, they were working down in the engine room. They also started to clean the tanks."

Mr. Hokanson: I move to strike that last part of the answer as being outside the pleadings now, Mr. Howard having stricken it.

(Deposition of Captain Beis.)

Mr. Howard: We are agreeable to striking that portion of it.

The Court: It will be stricken. The Court will disregard it.

"Q. I show you this paper and ask you if that is your [466] signature at the foot thereof?

A. That is right.

Q. This purports to be a bill for agency services rendered to the master and crew of the Panamanian tanker motor vessel Urania. Did you authorize that expenditure, Captain, in instances on these bills where your name appears thereon? Did you as master of the ship authorize that expenditure? Is that correct? A. Yes.

Q. And approved the same? A. Yes.

(Bill marked Respondent's Exhibit C-2 for Identification.)"

Mr. Howard: At this time I would like to have the clerk mark for identification these exhibits that are referred to in this deposition as Exhibits C-1 to C-55.

The Court: Let them be marked Respondent's Exhibit A-9.

(55 pages of bills marked Respondent's Exhibit A-9 for Identification.)

(Deposition of Captain Beis.)

"Q. When you were at Manzanillo you were anchored, is that correct? A. That is right.

Q. And the only means of access to the ship was by launch, is that correct?

A. By launch, that is right.

Q. And a pilot was put aboard the ship?

A. That is right.

Q. By launch?

A. Yes, by launch, that is right.

Q. I am referring now to this next bill marked 3 on which there does not appear to be the signature of the captain.

Mr. Silverthorne: In addition to the general objection to all of these bills that I have set forth before, I will specifically object to the introduction of this bill.

(Bill marked Respondent's Exhibit C-3 for Identification.)"

Mr. Hokanson: Mr. Silverthorne's objection may be premature, since the document has not yet been offered. It has merely been marked.

The Court: This document last referred to has been marked as Respondent's Exhibit A-9. Has it been offered?

Mr. Howard: We are still identifying it. [468]

The Court: I will reserve ruling on it until it is completed.

(Deposition of Captain Beis.)

"Q. At Manzanillo a pilot's services were engaged in maneuvering the ship into the anchorage grounds? A. That's right.

Q. And in taking her out of the anchorage grounds? A. That's right.

Q. I am now referring to bill marked 4 which does not have the captain's signature thereon.

Mr. Silverthorne: In addition to the general objection to all of these bills that I have set forth before, I will specifically object to the introduction of this bill.

(Bill marked Respondent's Exhibit C-4 for Identification.)"

Mr. Hokanson: Same objection.

The Court: Overruled.

"Q. Captain, I show you this bill and I ask you if you have any idea what that would be for? [469]

Mr. Silverthorne: May I ask at this time if his signature is on that bill?

Mr. Baillie: No, his signature is not on that bill.

Mr. Silverthorne: In addition to the general objection to all of these bills that I have set forth before, I will specifically object to the introduction of this bill.

(Bill marked Respondent's Exhibit C-5 for Identification.)"

(Deposition of Captain Beis.)

Mr. Hokanson: Same objection.

The Court: Overruled.

"Q. Do you know what it is, what it is for?

A. I can't explain that.

Q. You can't recall specifically, is that right?

A. That's right.

Q. I show you this bill, Captain, and I ask you if that is your signature on it? A. Yes.

Q. And this purports to be for work done at the work shop of the Naval Zone? [470]

A. Yes, the Naval—what you call that.

Mr. Baillie: On a one-inch machoule. The translater was unable to translate it at this time.

(Bill marked Respondent's Exhibit C-6 for Identification.)"

Mr. Howard: If the Court please, the various exhibits that we are talking about now are sub-exhibits under A-9.

The Court: How many of such sub-exhibits are there?

Mr. Howard: Fifty-five pages of them, Your Honor. Some of them are consolidations.

The Court: I have no way of identifying them. You are now referring in the deposition to something that is called in the deposition Exhibit C-6, are you not?

(Deposition of Captain Beis.)

Mr. Howard: Yes, Your Honor.

The Court: Is that a part of what we have marked Respondent's Exhibit A-9? I do not wish to give it another number if it is a part of A-9.

Mr. Howard: I am still referring to the exhibit now identified as A-9. [471]

"Q. I show you this bill, Captain, which purports to be for the welding of one piece of machinery. Is that your signature on the bill?

A. That is right, sir.

Q. Do you know what machinery that was?

A. It was one piece it looks like.

Q. In the engine?

A. In the engine, one piece of the engine, of that vertical.

Q. The vertical shaft?

A. Yes, they wanted to weld some piece."

Mr. Hokanson: I move to strike that as not responsive.

The Court: "They wanted to weld some piece" is stricken and the Court will disregard it.

"Q. It was work done in the engine room?

A. In the engine room, yes.

(Deposition of Captain Beis.)

(Bill marked Respondent's Exhibit C-8 for Identification.)

Q. I show you this bill, Captain, which purports to be for services rendered to the tanker on her sailing from [472] port. Do you know what that is. Your signature does not appear thereon.

* * *

A. I don't recall that.

(Bill marked Respondent's Exhibit 9 for Identification.)

Q. I show you this bill, Captain, which purports to be for submitting entry documentation to the port captain's office. Is that your signature?

A. That is right?

Q. And the expense was incurred?

A. Yes.

(Bill marked Respondent's Exhibit C-10 for Identification.)

Q. Captain, I show you this bill which purports to be for gratification to the staff of the port captain's office for attending the sailing formalities of the vessel.

A. Yes, I remember, I signed that.

Q. No, your signature is not thereon but do you remember making the payment?

A. Yes, I remember that.

* * *

A. This is the rule; we have to pay that. We paid that. [473]

Mr. Silverthorne: What was the nature of the

(Deposition of Captain Beis.)

gratification described in that bill? What was this bill for?

The Witness: Well, there is a port captain; I mean the captain of the port; they always take overtime and we have to pay that because they are working from 9 to 12 and then they start from 3 o'clock to 7. In case I have to go some place, to the Custom House, between 12 and 3 p.m. I have to pay overtime to them.

Mr. Silverthorne: This bill does not relate to overtime. This bill relates to a gratification.

The Witness: Giving me the orders to leave.

Q. Then as I understand it this is a payment to the staff of the port captain's office for attending to the formalities of sailing your vessel at 2 p.m.?

Mr. Silverthorne: In other words, Captain, that was a tip?

Q. Was it a tip or was it a payment requested to be made? A. No, a payment. [474]

Mr. Silverthorne: A payment for services rendered?

The Witness: Yes, a payment, a payment made.

(Bill marked Respondent's Exhibit C-11 for Identification.)

Q. I show you this bill, Captain, which purports to be for the services of two mechanics, and I ask you whether that is not your signature?

A. Yes, sir, I hired them and that is my signature. I hired them through the agent's office."

(Deposition of Captain Beis.)

Mr. Hokanson: I move to strike all but the answer "Yes, sir."

The Court: "Yes, sir" may remain in and the remainder of the answer, "I hired them and that is my signature. I hired them through the agent's office" is stricken and disregarded.

"(Bill marked Respondent's Exhibit C-12 for Identification.)

Q. What work did they do?

A. Down in the engine room.

Q. I show you this bill, Captain, which purports to [475] be a contribution to the Seamen's Home, is that your signature? A. That is right.

Q. And was that contribution required by the Mexican officials? A. That is right.

(Bill marked Respondent's Exhibit C-14 for Identification.)

Q. I show you this bill which purports to be for services rendered at unloading and loading of a piece of machinery. Is that your signature, Captain? A. That is it.

Q. And the work was done? A. Yes, sir.

(Bill marked Respondent's Exhibit C-15 for Identification.)

Q. Do you know what machinery is referred to there?

(Deposition of Captain Beis.)

A. The parts went to the machine shop.

Q. I show you this bill which purports to be for car service for yourself to go to the air port to meet the engineer. Is that your signature?

A. Yes, sir.

(Bill marked Respondent's Exhibit C-16 for Identification.)

Q. I show you this bill, Captain, which purports to be for car service attending the vessel. Is that your signature? A. That is right. [476]

(Bill marked Respondent's Exhibit C-17 for Identification.)

Q. This bill also purports to be for car service and is not signed by the master.

* * *

(Bill marked Respondent's Exhibit C-18 for Identification.)

Q. I show you this bill, Captain, which purports to be for consular fees, and I ask you whether or not that is your signature? A. Yes, sir.

(Bill marked Respondent's Exhibit C-19 for Identification.)

Q. Captain, I show you these next three bills which purport to be for medical services and supplies, and ask you to look at them and see whether or not that is your signature on these bills?

A. Yes, sir.

(Bills marked Respondent's Exhibits C-20, C-21 and C-22 for Identification.)

(Deposition of Captain Beis.)

Mr. Silverthorne: Captain, these bills were for medical services and supplies, is that right? [477]

The Witness: That is right.

Mr. Silverthorne: What was the nature of these medical services and supplies? Why were they required?

The Witness: They were for a steward, the chief steward.

Mr. Silverthorne: And why did he require the services of a doctor?

The Witness: He didn't feel good.

Q. (By Mr. Baillie): Captain, I show you this bill which purports to be for cash advanced to you. Is that your signature on the bill?

A. That's right.

Q. Can you tell us what that cash was advanced to you for? A. Expenses.

Q. Incidental expenses?

A. Incidental expenses.

Q. Incurred at the port? A. In port, yes.

(Bill marked Respondent's Exhibit C-23 for Identification.)

Q. I show you this bill, Captain, which purports to be for stores delivered to the ship, and I ask you whether that is your signature? A. Yes, sir.

Q. Those supplies were for the consumption of the [478] crew, were they? A. Yes.

(Bill marked Respondent's Exhibit C-24 for Identification.)

Q. I show you this bill, Captain, which purports

(Deposition of Captain Beis.)

to be for work shop services on Sunday. Is that your signature? A. Yes, sir.

Q. Do you know what those services were?

A. That is when we took out the vertical shaft in the machine shop because it was a little bended. We had a vertical shaft that we took out, that the Union Diesel man took out; it was a little bit bended, and we sent it to the shop to fix it.

(Bill marked Respondent's Exhibit C-25 for Identification.)

Q. I show you a bill, Captain, which purports to be for air mail postage, mailing of correspondence to the vessel. It is not signed by you. A. No.

* * *

(Marked Respondent's Exhibit C-26 for Identification.)

Q. I show you this bill, Captain, which purports to be for postage, and I ask you whether or not that is your [479] signature? A. Yes.

(Bill marked Respondent's Exhibit C-27 for Identification.)

Q. Now bills Nos. 28 through 41 appear to be copies of telegrams sent by the agent at Manzanillo, or by Captain Beis, or by the Union Diesel repair man, and I ask that these be marked, and I will ask the captain to go through them and identify the telegrams that he himself sent.

(Telegrams marked Respondent's Exhibits C-28 through C-41 for Identification.)

(Witness reads through telegrams.)

(Deposition of Captain Beis.)

Q. Captain, you have read through these telegrams. Do you recall sending the ones to which your name is annexed?

A. I beg your pardon?

Q. You have read through those telegrams?

A. That's right.

Q. Do you recall sending those telegrams to which your name is attached in typewriting? Can you recall having sent those telegrams to which your name is annexed?

A. That is right. I was with Mr. Cross when he sent the telegrams.

Q. And they all concern either the entry of the ship into Manzanillo or the repairs to the ship done there? [480]

A. That is right. We keep the office informed.

* * *

Q. Captain, I show you this bill which purports to be for laundry work done. Is that your signature? A. Yes, sir.

(Bill marked Respondent's Exhibit C-42 for Identification.)

Q. And the expenditure was authorized by you?

A. Yes.

Q. I show you this bill which purports to be for the difference in rating of a cable sent to the General Steamship Corporation. Is that your signature? A. That's right.

(Bill marked Respondent's Exhibit C-43 for Identification.)

(Deposition of Captain Beis.)

Mr. Baillie: This bill also purports to be port agency fee and of course the captain did not sign it.

* * *

(Bill marked Respondent's Exhibit C-44 for Identification.)

Q. Captain, I show you these bills which will be numbered 45 through 55, all of which purport to be for telephone charges from Manzanillo to New York and other places, and ask you to examine those. In some instances [481] the calls are said to have been made by you. Will you check through those, please.

(Bills marked Respondent's Exhibits C-45 through C-55 for Identification.)

A. That is all right.

Q. Captain, you have examined those receipts or bills. The calls purported to have been made by you, you recall having been made by you?

A. That's right.

Q. And where your signature appears that is your signature, is that correct? A. Yes.

Q. And they were made with respect to the repairs necessary to the ship? A. That's right.

Q. Or with respect to her orders as to where to proceed and so on after she left Manzanillo?

A. Yes.

* * *

Mr. Baillie: These bills which have been marked for identification are covered by what appears to be a statement by the agent in Manzanillo. There

(Deposition of Captain Beis.)

are two other statements by the agent with bills attached, and in order to keep this lot of bills, C-1 through C-55 for Identification in [482] order, I should like to have this statement marked for identification as Respondent's Exhibit C, and then we will attach these others to it.

(Statement by agent marked Respondent's Exhibit C for Identification.)

* * *

Q. Now this next sheet lists expenses and was prepared by the agent in Manzanillo."

Mr. Howard: At this I would like to have these documents marked for identification.

(Bills #913 marked Respondent's Exhibit A-10 for Identification.)

"Q. These next three bills purport to be for launch services; they have not been signed by the master; and I ask you, Captain, to look at them and see if you can recall the services of the launches as being rendered?

(Witness does so.)

(Bills marked Respondent's Exhibits D-1, D-2 and D-3 for Identification.)

A. I can recall. [483-4]

(Deposition of Captain Beis.)

* * *

Q. I show you this bill, Captain, which purports to be for pilotage service. Your name does not appear on the bill. Can you recall that service having been rendered? A. We paid for the pilot.

Mr. Silverthorne: Do you remember if this bill represents the amount you paid for the pilot?

The Witness: Well, I cannot remember exactly; we have so many bills to sign.

Mr. Silverthorne: You can't remember this bill exactly?

The Witness: Not exactly.

(Bill marked Respondent's Exhibit D-4 for Identification.)

* * *

Mr. Baillie: Bills Nos. 5 and 6 have not been signed by the Captain either. These may be duplicates of bills previously entered, and I ask the reporter to mark them for identification subject to check with bills previously submitted.

(Bills marked Respondent's Exhibits D-5 and D-6 for Identification.)

* * *

Q. I show you this bill, Captain, which purports to be for extraordinary services rendered on sailing from port [485] by the Public Health Service. It has not been signed by you. Do you remember those services having been rendered?

(Deposition of Captain Beis.)

A. No.

(Bill marked Respondent's Exhibit D-7 for Identification.)

* * *

Q. Nos. 8 and 9 were not signed by you, Captain. Let me ask you generally, Captain, when you put into Manzanillo you had to take a pilot aboard and you incurred certain pilotage charges. You then had to enter the ship's documents in the Custom House? A. Yes.

Q. Or whatever the procedure is there?

A. Yes.

Q. You incurred certain charges at that time, and subsequently on departure of the ship you incurred other charges, is that correct?

A. That is right.

Q. In these instances where these bills have not been signed by you it means that the payments were presumably made by the agent, is that correct?

A. That's right.

(Bills marked Respondent's Exhibits D-8 and D-9 for Identification.) [486]

* * *

Mr. Baillie: No. 10 purports to be for traffic dues. This has not been signed by the master either.

(Bill marked Respondent's Exhibit D-10 for Identification.)

* * *

(Deposition of Captain Beis.)

Mr. Baillie: I ask that these bills numbered 11 to 29, inclusive, be marked for identification.

(Bills marked Respondent's Exhibits D-11 through D-29 for Identification.)

* * *

Q. This is the agent's account sheet to which is attached one receipt, and this purports to be for freight and carriage of a box of repair parts. Do you recall, Captain, receiving the repair parts aboard the ship? Your name does not appear on the receipt. All I am asking you is, do you recall receiving the repair parts on board the ship?

A. Yes.

Q. That is all you would know about it?

A. That is all.

(Account sheet and receipt marked Respondent's Exhibits E and E-1 for Identification.)"

Mr. Howard: I might state that we will offer additional proof on these exhibits. [487-8]

The Court: Let this one be marked A-11.

(Bills #908-A marked Respondent's Exhibit A-11 for Identification.)

"Mr. Silverthorne: You don't remember if that bill was specifically the charge for carrying these repair parts aboard the ship?

The Witness: I don't remember that.

Mr. Silverthorne: You don't remember that bill?

(Deposition of Captain Beis.)

The Witness: No.

* * *

Q. Captain, will you explain to us why you left the ship in Los Angeles? Was there any reason for it? A. Well, to get married.

Q. In other words you requested to be released?

A. Yes.

Q. In order to get married, is that correct?

A. Yes.

Q. Captain, to go back to the time that the ship was undergoing repairs at Winslow, was there any occasion upon which the crew of the ship interfered with the progress of [489] the work by shipyard employees?"

Mr. Hokanson: That is objected to as not relevant.

Mr. Howard: I think it is a proper question, if the Court please.

The Court: I think there is something left out of the question. I believe the verb "were" should be inserted before the word "interfered" in order to understand the question.

"A. The crew——

Q. Was there any time when the crew of the ship, your men, were doing work aboard the ship which you have said consisted mainly of painting top sides, that that work interfered with whatever work was being done by the shipyard people?"

(Deposition of Captain Beis.)

Mr. Hokanson: I object to that on the ground that that is not within the knowledge of the witness, and he is therefore incompetent to answer the same.

The Court: He did answer it in the negative, and no harm comes from that particular answer, so the objection is overruled.

"A. No.

Q. Was any complaint made to you by shipyard people that there was any interference?

A. Never.

Q. Your answer is never, is that correct?

A. Yes.

Mr. Baillie: That is all.

Cross-Examination

By Mr. Silverthorne:

Q. Captain, when you left Puget Sound, Seattle, what were your scheduled ports of call?

A. Well, I had orders to proceed to Cristobal for further orders.

Q. I don't think you made it clear before if you were carrying cargo when you left Puget Sound. Were you carrying cargo when you left Puget Sound? A. We left in ballast.

Q. And you didn't call at any port prior to the breakdown off the Coast of Mexico near Manzanillo that you have testified to, is that right, you didn't call at any port? A. No.

(Deposition of Captain Beis.)

Q. What weather conditions did you encounter on board the Urania immediately prior to this breakdown? [491]

A. What kind of weather we had?

Q. Yes. A. Well, good weather.

Q. It was good weather?

A. Good weather.

Q. There was nothing unusual about the weather? A. No, it was good weather.

Q. It was very warm at this time, unusually warm? A. No, not so warm.

Q. Now, when you arrived at Los Angeles which shipyard did you go to?

A. What you call it, Craig Shipbuilding Company.

Q. And what was the date that you arrived at the shipyard? A. The 11th of November.

Q. And how long were you at the shipyard?

A. Well, I was only two days; then I left the ship.

Q. And you left the ship on November 13th?

A. 14th.

Q. Did you go to San Pedro?

A. Yes, San Pedro; went to San Pedro.

Q. And the Craig Shipbuilding Company is at San Pedro?

A. San Pedro, yes. No, not San Pedro.

Mr. Baillie: Refer to the logbook, Captain.

A. (Consulting logbook): San Pedro, yes.

Q. Then the Craig Shipbuilding Company was

(Deposition of Captain Beis.)

located in [492] San Pedro, and you went there first, is that correct? A. I didn't get that.

Q. Then the Craig Shipbuilding Company was located in San Pedro and you went there first, is that correct?

A. Yes, San Pedro, that is right, I mean the Craig Shipbuilding Company.

Q. You went to the Craig shipyard first?

A. Yes.

Q. Located in San Pedro?

(No answer.)

(Discussion off the record.)

Q. Did the Urania dock at San Pedro at any time?

A. We anchored at San Pedro anchorage, and then we docked at the Craig shipyard.

Q. In other words you anchored first at San Pedro? A. Yes.

Q. And then went to the Craig Shipbuilding Company in Long Beach? A. That's right.

Q. That is correct? A. That is correct.

Q. How long did you anchor at San Pedro?

A. We dropped anchor at 20 minutes after 10.

Q. On what day?

A. The date of the 11th.

Q. November 11th? A. Yes. [493]

Q. And when did you leave San Pedro?

A. On the same day, 12:30.

Q. Did you proceed directly then to the Craig Shipbuilding Company yard in Long Beach?

(Deposition of Captain Beis.)

A. Yes, in Long Beach, that is right. The Pacific Retriever took us in.

Q. Did you take on any cargo at San Pedro during this time? A. No.

Q. When the Urania was at Long Beach, California, do you know the company or the individuals who made the repairs to the ship there, what company repaired your vessel there, repaired the Urania there? A. You mean at Long Beach?

Q. At Long Beach?

A. I know that for the engine came down that Union Diesel Company. I don't know about the other repairs.

* * *

Q. Captain Beis, you don't know of your own knowledge, you don't actually know yourself what caused this breakdown at sea, do you? The engineer knew but you didn't know?

A. No, I don't know anything about it.

Q. You don't know actually what parts they replaced or repaired at Manzanillo or Long Beach, do you?

A. At Manzanillo I know only two gears. [494]

Q. But you don't know what the gears were?

A. No, I don't know anything about it.

Q. When you described earlier the things that you found wrong with the ship after it left Puget Sound, you don't know actually of your own knowledge what caused them to go wrong, do you?

A. No, I don't know.

(Deposition of Captain Beis.)

Q. You don't actually know of your own knowledge, Captain, what maintenance procedure or what procedure they followed in the engine room department? That was under the province of the engineer, was it not?

A. Yes, I don't know anything about it.

Q. You don't know anything about what maintenance proceedings were followed in the engine-room? A. No.

* * *

Q. How far from Manzanillo were you when this breakdown occurred?

A. I was about 70 miles.

Q. And you proceeded 70 miles to Manzanillo?

A. I have my position here (referring to log-book).

Q. About 70 miles approximately? Right?

A. Approximately.

Q. And you traveled to Manzanillo under your own power? [495] A. That's right.

Q. Do you know how many gallons of fuel you used on that trip to Manzanillo?

A. No, that is the engineers.

Q. You have no knowledge? A. No.

Q. Do you know about how many gallons of fuel oil the ship consumed at any given speed?

A. That is the engineers; the engineers would know that.

Q. Do you know who furnished the Urania additional fuel which was re-supplied at San Pedro?

(Deposition of Captain Beis.)

A. I don't know.

Q. Or at Long Beach?

A. I don't know at Long Beach.

Q. Do you know the name of the agency at Los Angeles, the steamship agency you used?

A. Yes.

Q. What was it?

A. It was General Steamship Corporation, Ltd., something like that.

Q. Do you know what expenses the Urania had at Long Beach other than the expenses for repairs?

A. No, I don't know.

Q. You were only there two days?

A. Only two days, yes. [496-7]

* * *

Q. The expenses that you authorized were on the whole ordinary expenses of a ship in port, is that correct? A. That is right.

Q. With the exception of certain expenses for machinery repair? A. Yes.

Q. For example, the payment for medical expenses which has been identified as Respondent's Exhibits C-20, C-21 and C-22 for Ident., those were medical expenses for the chief steward, is that correct? A. That is right.

Q. And his sickness was in no way connected with the breakdown of the ship and its deviation to Manzanillo, is that correct?

A. Well, I don't know about that, because when

(Deposition of Captain Beis.)

we left from Seattle he was good.

Q. But his sickness was not caused by the breakdown and the deviation to Port Manzanillo, was it?

A. No.

Mr. Baillie: Counsel will concede that it was not?

Mr. Silverthorne: I will rest there on cross-examination. [498]

Redirect Examination

By Mr. Baillie:

Q. Did I understand you correctly that you were in ballast from the time you left Winslow until the time you arrived at the Craig Shipbuilding Company at Long Beach?

A. No, before we got in we took the ballast out.

Q. But I mean you took no cargo at any of your stops? A. No cargo.

* * *

Q. Who relieved you as captain from Los Angeles? A. Captain Nicholas Helmis.

Q. When did he relieve you? When did he arrive in Los Angeles? What I am getting at, did he arrive before he relieved you, or did he arrive at the time he relieved you?

A. He came aboard to relieve me.

Q. Captain, did you carry ballast in the forepeak tank as well as in the regular cargo tanks of the ship when you left Puget Sound?

A. We carried fuel oil.

(Deposition of Captain Beis.)

Q. You carried fuel oil in the forepeak tanks?

A. No, behind the forepeak tank, after the forepeak, that ballast tank we made for fuel oil tank. They fixed that in Seattle, Winslow.

* * *

Q. In your arguments or disputes that you have previously testified to with the employees of the ship repair yard during the progress of this work, was there any time when you were afraid of physical violence?"

Mr. Hokanson: If the Court please, I object to that question as not being relevant or connected with the issues in this case.

The Court: How does the relevance of that matter appear?

Mr. Howard: If the Court please, there is a question as to the manner in which some of this work was performed by Commercial Ship Repair yard. It might appear from the testimony of this witness that they were threatened in such a way that it would have a bearing on whether they accepted work in the condition in which it was found when the ship was tendered to them by the yard on completion of the job.

Mr. Hokanson: I think that is rather a far stretch of relevancy. There has been no issue injected into this case of coercion. That is a matter that should have been pleaded; that is the only way

(Deposition of Captain Beis.)

in which it might have any relevancy at all.

The Court: The objection that it was not raised on cross-examination and is not a proper subject for [501] redirect examination is raised by Mr. Silverthorne.

Mr. Hokanson: Yes, I renew that.

The Court: Each and all the objections are sustained.

"Recross-Examination

By Mr. Silverthorne:

Q. Captain, this was the first time that you had ever commanded a diesel powered vessel, is that correct? A. That is right.

Q. So the Urania, the type of the Urania that you have been describing was your first experience with a diesel powered vessel?

A. A diesel powered vessel, that is right.

(Deposition closed)."

The Court: At this point we will suspend the proceedings for today. All those connected with this case are excused until Monday morning at 10:00 o'clock in the forenoon.

(At 4:05 o'clock p.m., Saturday, April 9, 1949, proceedings adjourned until 10:00 o'clock a.m., Monday, April 11, 1949.) [502]

April 11, 1949, 10:00 o'Clock A.M.

Mr. Howard: The cross-libelant would now like to read the deposition of Mr. Baxevanis.

The Court: Before you actually begin that, would it be possible for you to call today, on both sides, all of the out-of-town witnesses you may be expecting to call? If you did that, would you be doing so out of order?

Mr. Howard: We have one witness, your Honor, from out of town who has not yet arrived. We expected to call him today but he will not be able to be present today. He has to come from some distance and it would be taking that witness out of order insofar as the cross-libelant's case is concerned.

The Court: I will not make the requirement. I was just hoping to accommodate out-of-town witnesses as soon as possible. I prefer, if consistent with the convenience of litigants and the convenience of the witnesses themselves, to call them in the order in which they are supposed to be called, but I am also anxious to avoid the possibility of counsel becoming embarrassed in the proceeding by inconveniencing [503] by out-of-town witnesses.

You may proceed with the reading of the deposition. Will it be convenient for Mr. Hokanson to read the answers? It affords a better opportunity to to opposing counsel to note objections. If counsel are agreed as to the propriety of taking the deposition, you may commence with the first question on direct examination.

Mr. Howard: That will be the last line on page 68.

DEPOSITION OF MR. BAXEVANIS

"Direct Examination

By Mr. Baillie:

Q. Chief, will you tell us what your experience has been with diesel motors and as an engineer on board various ships?

A. I have worked on board ships as a chief engineer for the last 10 years.

Q. Beginning in about 1916, was it, that you had something to do with diesel motors?

A. Yes, I started to work with those motors in the shop in Rumania, and at that time I could freely work in that line.

Q. By whom were you employed?

A. I was working at that time for the European Danubian Commission, which was its official name.

Q. You worked in machine shops, and did you also go [504] on board their boats? A. Yes.

Q. What type of boats did they have?

A. Well, they had dredgers; they had small motors; they operated those towboats.

Q. What we call tugs, did they have those?

A. Yes, tugs, that is right.

Q. Did you work as an engineer on board the tugs? A. Yes.

Q. They were diesel powered?

(Deposition of Mr. Baxevanis.)

A. Well, the smaller boats or vessels were powered by diesel motors, and the larger vessels were powered by steam engines.

Q. And how long did you stay with the European Danubian Commission?

A. Well, I was a young man when I was working with that Commission. I believe I worked for them about 6 or 7 years.

Q. And after that what did you do?

A. After that I went to Italy.

Q. And worked for whom?

A. I worked as engineer on board Italian vessels.

Q. Were they diesel powered?

A. They had steam engines then. I worked also on board a vessel which had diesel engines.

Q. Did you go to school in Italy? [505]

A. Yes, I went to Preparatory School in Naples, headed by Francesco Imperato.

Q. What did you study there?

A. I studied there motor engines, diesel engines.

Q. How long were you at that school?

A. Well, I took a preparatory course of 18 months, which I completed.

Q. And after you got out of the school what did you do?

A. I continued to work also always as an engineer on board the Italian vessels.

Q. Did you acquire an engineer's license?

A. I was authorized to do work as an engineer,

(Deposition of Mr. Baxevanis.)

I didn't have the actual license. In Italy it was necessary to be an Italian citizen to have a Government license.

Q. How long did you continue to work on Italian ships?

A. I worked from 1920 until about 1931 or 1932.

Q. And in 1931 or 1932 what did you do?

A. Then I went back to the Danube River and I worked with the Anglo-Danubian Company, which was a transportation company.

Q. And what did you do for them?

A. I was chief engineer for them.

Q. What sort of ships did you sail on?

A. I was a chief engineer on the Princess Elizabeth, one of their vessels, which was diesel powered.

Q. The Princess Elizabeth sailed back and forth along the Danube, is that correct?

A. Yes, we traveled the entire length of the Danube, in the navigable part of the Danube down to Istanbul, at which port the English took it over.

Q. Was this a type of tug that towed barges?

A. Well, it was the biggest tug on the Danube.

Q. What was the power of her engines?

A. 2800 horsepower.

Q. How many engines did she have?

A. Three engines with three propellers.

Q. What is the horsepower of the engine of the Motor Tanker Urania? A. 560.

Q. How long did you stay with the Anglo-Danubian Company?

(Deposition of Mr. Baxevanis.)

A. I worked with them from 1935 until about 1941 when Anglo-Rumanian relations were broken off.

Q. And what did you do then?

A. Well, I was deprived of my liberty on account of some sabotage operations, and then finally I succeeded in escaping and I went to Egypt where I was finally employed in the Greek Navy.

Q. You talk about sabotage operations. Under whose orders did you carry that out? [507]

Mr. Hokanson: I object to the question on the ground that it is not relevant to the proceedings here, Your Honor.

The Court: What is the relevancy?

Mr. Howard: By this examination, we are attempting to qualify this witness and show his past experience. He has spoken in the previous answer about sabotage operations. I think it would be very important for the Court, in the Court's mind, to have the matter cleared up as to what sabotage operations he was working in, to show whether he was working for an enemy or whether he was working with a friendly country in these sabotage operations.

The Court: Does it have any bearing upon the possibility of inferences being made concerning whether or not the damages alleged in the cross libel were sabotage damages or some other kind?

Mr. Howard: No, Your Honor, but it does go as to the credibility of the witness, and he has been testifying as to his qualifications. It seems to me,

(Deposition of Mr. Baxevanis.)

having testified as to a certain element of sabotage operations here, it is important for that to be cleared up in the mind of the Court as to his credibility.

There is no contention, if the Court please, that there are any sabotage operations involved in the tanker Urania.

The Court: Either as to matters stated in the libel or cross libel?

Mr. Howard: That is my understanding. Am I correct in that?

Mr. Hokanson: I don't think it is specifically pleaded, Your Honor. This matter is injected into the case on direct examination. I feel it has no part in the case.

The Court: The objection is overruled.

While we are so interrupted, may I ask if counsel can agree on the capacity in which this witness served the Urania during the times of the alleged occurrences mentioned in the cross-libel?

Mr. Hokanson: I believe, Your Honor, it will be established that he was the chief engineer.

The Court: What do you think he was?

Mr. Howard: The chief engineer, Your Honor.

"A. Well, we were together with the English against the Germans.

Q. Now when you went with the Greek Navy what did you do?

A. I was an officer-engineer in the Navy. [509]

Q. Where were you stationed?

(Deposition of Mr. Baxevanis.)

A. Well, in some cities of Egypt, Alexandria, Port Said.

Q. After your experience in the Greek Navy when did you go to sea again on commercial ships?

A. That was in 1947 with the same company, Compania Naviera Limitada.

Q. You mean by the same company, the company with which you are now associated?

A. Well, I was working on the Urania, I was taken off the ship here at New York in order to work with that company.

Q. In 1947 you became employed by Compania Naviera Limitada of Panama, is that correct?

A. Yes. I was taken to work with that company.

Q. And in 1947 when you were employed by this company what did you do?

A. I started to work on the ship Perla as second engineer.

Q. And you stayed with the Perla until you were taken off the Perla to become chief engineer of the Urania, is that right? A. Yes.

Q. Did you join the Urania when Compania Naviera Limitada of Panama acquired the ship from the U. S. Navy? A. Yes. [510]

Q. You joined her when Captain Beis joined her, is that correct? A. Yes.

Q. What was the engineroom complement of the Urania?

A. There were still aboard at the time I took

(Deposition of Mr. Baxevanis.)

charge three engineers and one wiper.

Q. When you say still aboard you mean they accompanied you when Captain Beis took the ship over from the United States Navy?

* * *

Q. When you say they were still aboard will you explain what you mean by that?

A. I mean to say that when I went aboard I was to the first engineer or chief engineer; then I had the first assistant, second assistant, third assistant, and there was a wiper also.

Q. Did the first, second and third assistant engineers and the wiper go aboard the ship with you?

A. Yes.

Q. In other words, they were employees of the owner of the ship? A. Yes.

Q. Can you tell us anything about the experience of the first, second and third assistant engineers?

A. Well, they also had had experience with motor engines. [511]

Q. Chief, aboard the Urania you kept a log, as is done on most ships, is that correct?

A. Yes.''

Mr. Howard: At this point I would like to have the two engineroom logs marked for identification.

The Court: Do you think one of you will have an objection as to one that will not apply to the other?

(Deposition of Mr. Baxevanis.)

Mr. Howard: I will have none, Your Honor.

The Court: Do you see any reason why they should not be the same exhibit?

Mr. Hokanson: Your Honor, I note that the log, at least one of them, covers a period not relevant to the proceedings here.

The Court: Is that true of both logs or just one?

Mr. Hokanson: At least one.

The Court: Would that not be true of almost any logbook?

Mr. Howard: Yes, Your Honor. I thought that they together combine to make up the period we are concerned with in the libel and cross-libel. If I am mistaken, I will withdraw one of the logs if it does not cover that period.

Mr. Hokanson: Each of them, as I examine them, covers a period not specifically relevant. [512]

The Court: Let them be marked separately. That one which covers the earlier period will be marked A-12.

Mr. Howard: I would like to have the book showing on its cover that the log starts as of July 30, 1948, marked with the first number.

The Court: A-12 will be the number which that will have.

(7-30-48 engineroom logbook marked Respondent's Exhibit A-12 for Identification.)

Mr. Howard: And the book showing that it is a continuation of the same log starting on October 29, 1948, marked with the second number.

(Deposition of Mr. Baxevanis.)

(10-29-48 engineroom logbook marked Respondent's Exhibit A-13 for Identification.)

"Q. I show you these two books and ask you to examine them and tell me what they are?

A. Those are the engineroom logbooks. The first entry here in the engineroom log on July 30, 1948, states simply in Greek that when the vessel was delivered to us everything had been put in place on board."

Mr. Hokanson: I move that the last part of the answer be stricken on the ground that it is not responsive.

Mr. Howard: I submit the entire answer is responsive.

The Court: The objection is overruled.

"Q. Who kept these logs? Who wrote in them?

A. I did.

Q. Are all of the entries throughout the logs made by you?

A. Yes, in my own handwriting.

Q. And your name appears at the bottom?

A. Yes.

Mr. Baillie: I ask to have these two logs marked Respondent's Exhibits F and G for Identification.

* * *

(Logbooks marked Respondent's Exhibits F and G for Identification.)

(Deposition of Mr. Baxevanis.)

Q. Chief, did you know that on October 13, 1948, the [514] M/T Urania was attached under legal process out of a court in Seattle, Washington?

A. Yes.

Q. You did know that? A. Yes.

Q. Were these logs, Chief, kept in the regular course of the ship's business?

A. Yes; these books contain happenings connected with the engineroom. The deck log was kept by the captain.

Q. When you made these entries was there ever any thought in your mind that the ship had been attached under legal process?

Mr. Silverthorne: I am going to object to the question. He was already answered."

Mr. Hokanson: I object to the question, Your Honor. The objection registered by Mr. Silverthorne is renewed at this time.

The Court: The objection is overruled.

"A. I knew that it had been attached for two or three days, then the attachment was lifted and we sailed away.

Q. Did the fact that you knew the ship had been attached have any effect upon the entries you made in [515] these logs?

Mr. Silverthorne: Same objection."

Mr. Hokanson: Same objection, Your Honor.

The Court: Overruled. I do not understand

(Deposition of Mr. Baxevanis.)

why the cross-respondent would make an objection to that subject matter. I think it would be more material from the cross-respondents' point of view than any other.

"A. No, it did not affect me at all. These books, engine logs, contain a record of the work I did in the engineroom, and what was consumed. I had nothing to do with administrative matters. Those books had to do only with what was going on in the engineroom."

Mr. Howard: I offer Cross-Libelant's Exhibits A-12 and A-13.

Mr. Hokanson: The objection heretofore made, Your Honor, to the introduction of these logs based upon the theory that litigation was known to the person making the entries at the time, who was an employee of the [516] claimant corporation, and to that extent his entries could be influenced by knowledge of that litigation——

The Court: The prima facie proof on the direct examination is that each of the exhibits was made in the ordinary course of the ship's business. The subject matter of the objection may go to the weight of the evidence, but does not seem to the Court to go to the admissibility, and the objection is overruled. A-12 and A-13 are now admitted.

(Respondent's Exhibits A-12 and A-13 received in evidence.)

(Deposition of Mr. Baxevanis.)

"Q. Chief, the Urania has a diesel motor as her main engine, is that correct?

A. Yes, sir, Union Diesel. [517]

Q. I would like you to draw for me in not too great detail but an outline sketch of the main power plant of the M/T Urania, which you say is a diesel engine, showing how many cylinders it has?

(Witness draws sketch.)"

The Court: May it be appropriately marked by the clerk in his system of marking?

Mr. Howard: For the sake of expediency, I will now segregate these several diagrams which I believe could all be marked at this time.

The Court: Could they all be marked by one overall number with sub-numbers for each? Are they all going to be proved by this witness, if they are going to be proved by anyone, and do they illustrate this witness' testimony?

Mr. Howard: That is correct.

The Court: Let them all be marked A-14, and the first one will have (1) following the 14, and the next one (2), etc., successively.

(Drawings marked Respondent's Exhibit A-14 (1), A-14 (2), A-14 (3), A-14 (4) and A-14 (5) for Identification.)

Mr. Howard: They are marked for identification [518] I, J, K, L and M, omitting N, which pertains to a claim which has been eliminated from the case.

(Deposition of Mr. Baxevanis.)

Mr. Hokanson: May I ask on what page the exhibits appear?

Mr. Howard: It is on page 113.

The Court: These references in the deposition to these exhibits appear to use capital alphabetical letters for the identifying mark of the exhibit.

Mr. Howard: These are the five exhibits referred to in the deposition by I, J, K, L and M for identification.

"Q. You have drawn a sketch which I take it is a view from overhead as though you were looking down on the engine, is that correct?

A. Yes, that's right.

Q. To your right I should imagine is toward the forward part of the ship, is that correct?

A. Yes, that's right. This is the fore part of the ship. (Interpreter writes 'Fore part' on diagram.)

Q. And to your left would be aft, is that correct?

A. Yes (indicating same on diagram).

Q. Does this represent the main crank shaft?

A. That is the fly wheel, and then comes—I mean [519] further aft comes the thrust shaft.

Q. Will you draw an arrow from this fly wheel and mark it down below so that when they read the record they will know what we are talking about.

(Witness writes in Italian and Interpreter writes "Fly wheel" in parenthesis.)

Q. The cylinders are numbered 1, 2, 3, 4, 5, 6?

A. Yes.

(Deposition of Mr. Baxevanis.)

Q. From fore to aft? A. That is right.

Q. Now this outside heavy line that you have drawn, that would represent the block, is that correct?

A. Yes, that is the casing or block and is attached by this (indicating).

Q. Those little circles that you have drawn around are the bolts that attach it to the floor?

A. This represents the screws."

Mr. Howard: The witness was referring to what has been marked for identification as A-14(1). I will offer all of them in a group after the entire group has been identified.

"Q. And then perhaps we had better have another view [520] of this looking from either side say you are standing on the starboard side and looking port, what would you see when you look at it?

Mr. Baillie: The witness has drawn a diagram showing the side view of the engine looking from the starboard side toward the port side.

Mr. Baillie: I offer this first sketch for identification as Respondent's Exhibit I.

(Diagram marked Respondent's Exhibit 1 for Identification.)

Q. What are those squares that you have drawn on the block there in the second sketch?

A. Those are the lids or covers for the purpose

(Deposition of Mr. Baxevanis.)

of opening the carter, and then within the carter there is the shaft of the motor.

Q. The dotted line you are drawing now indicates the crank shaft, is that correct?

A. Yes, that's right, the crank shaft. The crank shaft is represented by the dotted line, and here are the pistons (indicating).

Q. How do you start this type of motor?

A. There is a system by which the engine is started by compressed air.

Q. And what does that operate on?

A. Here there is an air system or air distributor which gives the first movement to any of the cylinders shown on the drawing.

Q. The compressed air works on what?

A. The effect of the compressed air here is that of pushing downward any piston of any of these cylinders.

Q. And that would work on the crank shaft, is that right?

A. Then the combustion pumps would go to work and we have combustion.

Q. Once the air compressor sent the compressed air into the cylinder chambers and started your pistons moving, and in turn they start the crank shaft moving, then what causes the continuous exploding of the engine? Will you tell me what happens then?

A. The vertical shaft here transmits its motion to the cam shaft.

Q. Will you mark aft on there, please?

(Deposition of Mr. Baxevanis.)

(Witness writes in Italian and Interpreter writes "Aft" in parenthesis in English.)

Mr. Baillie: I offer this drawing for identification as Respondent's Exhibit J.

(Drawing marked Respondent's Exhibit J for Identification.)

Q. Will you draw the vertical shaft for us, please?

The Interpreter: The witness has drawn a [522] sketch of the vertical shaft.

Q. These rectangles on which you have drawn slanting lines, what are they?

A. These are sections here rectangular in shape showing the inside of the shaft.

Q. The inside of the shaft? A. Yes.

Q. Well, this one here, what is that?

A. That is a gear.

Q. Will you please draw a line from here and mark that "Gear."

The Interpreter: The witness writes the Italian word for gear and I put in parenthesis "Gear."

Q. What is this box?

A. That is the governor or regulator.

Q. Will you draw a little line from that and put "Governor"?

The Interpreter: The witness writes in Italian "Governor" and in parenthesis I write the word "Governor" in English.

Q. This is a gear at the top of the shaft, is that right, too? A. Yes.

Q. Will you write in "Gear" there, too?

(Deposition of Mr. Baxevanis.)

The Interpreter: The witness writes in Italian "Upper gear" and I put in in English [523] "Upper gear" in parenthesis.

Q. Now it is obvious from this sketch that your crank shaft turning around will turn this gear, which appears to be vertical in your sketch, which in turn will turn this gear which is horizontal in your sketch, is that right?

A. The crank shaft here propels the shaft here, which in turn propels the lower gear, and the lower gear in turn operates and propels the upper gear.

Q. By means of this vertical shaft?

A. Yes, by means of the vertical shaft.

Q. What does the upper gear turn? Is that connected to something else?

A. It is connected with the cam shaft and causes it to move.

Q. Will you draw in the cam shaft on that drawing?

The Interpreter: The witness has drawn the shaft and six cams.

The witness writes in Italian "Cam" and I write in English in parenthesis "Cam."

Q. And these cams in some way affect the timing of the explosions in the cylinders?

A. Yes, these cams regulate or govern the explosion and the combustion.

Q. How are these gears lubricated, Chief?

A. The upper gear here is lubricated by the same system [524] that lubricates the lower gear; that is by oil pump.

(Deposition of Mr. Baxevanis.)

Q. Are these encased in any sort of an outer covering? A. There is a casing, yes.

Q. And the oil is in the casing, is that right?

A. No, the oil comes from some small tubes which pour into the carter. There is a tube there or pipe, and the oil goes into the casing here. There is more than one tube from which the oil flows into the gear; and the same thing in connection with the lower gear.

Q. That is lubrication oil you are talking about?

A. Yes, the same oil which lubricates the entire shaft of the engine.

Q. How does that oil get into the tubes which in turn carry the oil to these gears?

A. These tubes communicate with a pump and the pump sends the oil into the tubes.

Q. And where is the pump located?

A. The pump is located here (indicating), near the lower gear of the vertical shaft. It is in the position engaged with the lower gear.

Q. This is the pump you are talking about to force oil into the tubes which in turn carry it to the gear?

A. The pump receives the oil from the carter, from here (indicating). It sends the oil into the filter. Then there is another pump called a double pump, and that double [525] pump pushes the oil with a pressure of 20 pounds, about.

Q. Now this oil that is coming through the pump and being forced into the tubes and then forced unto the gears is not constantly new oil, is it?

(Deposition of Mr. Baxevanis.)

A. No; it is of course the same oil, it goes back into the filter, it is cooled again and then goes around again.

Q. Does the oil have to be cooled at some point?

A. Yes, of course it has to be cooled because when the oil goes to the gear it has to absorb a certain temperature, and the cooling makes that possible.

Q. How is it cooled?

A. There is a radiator. The oil goes into a radiator in which there are some tubes. Then the cold water of the sea cools the oil.

Q. Is there some confusion in the word radiator here; we think of the word radiator as meaning something that heats.

A. Well, I call the radiator the cooler because it is the same shape. It is the same system you have in your automobiles, you call it a radiator and we call it a radiator, too. In the case of the automobile you have cool air. In this case you have the seawater which cools the oil.

Mr. Baillie: I offer for identification this last sketch that the witness has drawn as Respondent's Exhibit K.

Sketch marked Respondent's Exhibit K for [526] Identification."

Mr. Howard: In this particular reference he was referring to a side view, Exhibit K, which I believe carries the court's identification A-14 (3).

(Deposition of Mr. Baxevanis.)

"Q. Where is this cooler located?

A. It is on the port side. This is the view from the starboard side (indicating), and the radiator cooler is on the port side.

Mr. Baillie: We are referring now to Respondent's Exhibit J for Ident.

Q. Will you draw me, please, a sketch of this cooler that you are talking about? Give us some idea what it looks like.

(Witness draws sketch.)

A. The seawater comes from here (indicating).

Q. That is from the lefthand side of the page as you are looking at it?

A. That's right. There is a diaphragm here in the radiator, and the seawater goes through that diaphragm and then comes out this way (indicating to the right of the drawing). The oil comes from here (indicating). [527]

Mr. Baillie: Witness indicating from the right-hand side over to the lefthand side of the drawing.

Mr. Silverthorne: I think we ought to have the drawing marked top and bottom so as to identfiy it.

The Interpreter: The witness writes in Italian and I write in English in parenthesis "Top part" and "Bottom part."

Mr. Baillie: Will you put here lubricator, oil cooler, or whatever it is.

The Interpreter: The witness writes in Italian

(Deposition of Mr. Baxevanis.)

and I write in parenthesis in English "Oil pipe" in two places, and "Sea water" in two places.

Mr. Silverthorne: I think you ought to mark the oil cooler.

The Interpreter: The witness writes in Italian and in English also "Oil Cooler."

Q. The sketch you have drawn is of the exterior of this oil cooler, is that correct?

A. Well, this is not the complete drawing of the section, it purports to show the inside of the cooler.

Q. You show here the oil pipe entering from the right as you look at the sketch, and then it would appear from this drawing that the oil simply emptied into a more or less [528] square chamber and then flowed out through another pipe at the left as you look at it. I shouldn't imagine that could be true, could it?

* * *

A. I have shown on the drawing these compartments. The oil goes through these compartments in the drawing. The lines I have drawn are compartments.

Q. Will you explain what you mean by these compartments.

Mr. Baillie: The witness draws a little square on the diagram with a number of circles.

A. These small circles represent the openings of the tubes or pipes. Through these openings goes the oil. Then on the other side, on the opposite side the seawater comes in to cool it.

(Deposition of Mr. Baxevanis.)

Mr. Silverthorne: I think we ought to identify what the witness has drawn just now.

Q. The sketch you have drawn shows a cross-section of the cooler as you look down on it, is that correct? A. That is right.

Q. And we are referring to the sketch at the lefthand side of the page? A. That's right.

Mr. Baillie: So there will be no mistake I offer this sketch for identification. [529]

Marked Respondent's Exhibit L for Identification.

Q. These little circles you have drawn in that part of Respondent's Exhibit L for Identification which is to the left, represents tubes, is that correct?

A. I have drawn an almost round opening of the tube, but the actual shape of the opening is like this.

The Interpreter: Indicating an oblong shaped opening.

Q. You are now making sketches over the circles which were first drawn?

A. Yes, I have connected the round openings and made an oblong shape now. Across the oil tubes there are the tubes which carry the seawater which cools the oil in the tubes.

* * *

The Interpreter: Witness has drawn an arrow showing the direction from which the oil flows into the tubes, and he has drawn also another arrow

(Deposition of Mr. Baxevanis.)

showing the direction from which the seawater comes into the other set of tubes, the purpose of which is to cool the oil.

Q. Chief, is my understanding correct from what you have just said that within this cooler which I assume has an outside casing around it—— [530]

A. I have drawn all of the inside part.

* * *

A. I have drawn all the inside part, that is the cooler or radiator itself, but there is a casing.

Q. And within this casing, there are two sets of tubes, is that correct?

A. The inner part of the tubes carries the oil, and the outer parts of the tubes carries the water.

Q. You mean you have tubes within tubes?

A. Yes, a tube within another tube.

Q. So that the salt water is in direct contact with the tube that carries the oil?

* * *

A. It touches the outer part of the tube containing the oil.

Q. During the time that the Urania was at the Commercial Ship Repair yard were you in attendance in the engineroom during the entire time?

A. Well, I was all over supervising the work of my assistants on board, and I was also in the shop, in the yard.

Q. Was or was not any work done by the Commercial Ship Repair yard to this lubricating oil cooler?

(Deposition of Mr. Baxevanis.)

A. The radiators or coolers were sent to the Commercial Repair shop for the purpose of being cleaned [531] and tested. They had to see that there were no leaks."

Mr. Hokanson: I move to strike the latter part as not responsive. [532]

The Court: The objection is overruled and the motion is denied.

"Q. Was this work done on board the ship?

A. In the shop.

Q. Did the Commercial Ship Repair Yard take this cooler off the ship? A. Yes.

Q. When they remove a cooler such as this do they take it in one piece? A. Yes.

Q. Do you aboard the ship have the means by which this cooler can be cleaned?

A. No, we do not; that is why I had to send it out."

Mr. Hokanson: I move to strike that latter part as not responsive.

The Court: The objection is overruled.

"Q. Did you or anybody else connected with the ship do any work on this cooler?

A. No, nothing.

Q. Now, did the Commercial Ship Repair Yard do any work on the cylinders of the main engine?

(Deposition of Mr. Baxevanis.)

A. Yes, the Commercial Ship Repair Yard changed the inner sleeves of the cylinders.

Q. Will you draw another diagram of one individual cylinder, let's say draw the No. 2 cylinder.

A. They are all the same, so it does not make any difference what cylinder I draw.

(Witness draws diagram.)

Q. Now this outer line represents what?

A. The outer part of the drawing represents the cylinder itself, and the inner part here, the upright part, represents the sleeves. The outer part of the drawing represents the cylinder itself. Then the two inner uprights represent the sleeves, and in the space between these two parts there circulates fresh water for the cooling of the sleeves.

Q. This outer part then is what you call the casing of the cylinder? A. That's right.

Q. And these two vertical shaded areas represent the liner? A. Yes, or inner sleeves.

Q. And between the casing and the liner there circulates fresh water, is that right? A. Yes.

Q. Now the pistons are where?

(Witness draws on diagram and Interpreter writes [534] "Casing" and "Casing" and "Liner" and "Liner".)

A. And these are piston rings (indicating).

(Interpreter writes "Piston Rings".)

Q. Now, how are the pistons lubricated?

(Witness draws on diagram.)

The Interpreter: The witness has made a drawing on the right side of the cylinder in question

(Deposition of Mr. Baxevanis.)

showing that oil comes from a separate lubricator, which oil is then transmitted to the piston.

Mr. Silverthorne: I think we ought to show the top and bottom again in this drawing.

Q. Will you put "Top" up here?

(Witness makes another drawing on diagram and the Interpreter writes "Oiler Ring" and "Top" and "Bottom".)

Q. I take it these lines run through the outer casing and through the compartment which contains salt water and in through the sleeve is a tube of some sort?

A. These are small tubes which have some threading at the end here. They can be closed.

Q. You have an opening then through the sleeve for the tube to go through? A. Yes.

Q. If you have an opening through the sleeve what [535] keeps this water in this area between the sleeve and the outer casing from going through into the piston chamber?

A. There is a gasket, a copper gasket.

Q. Now what work did the shipyard do on the cylinders of the main motor?

A. The shipyard removed the liners which were new, and put them into new cylinders.

Q. Will you explain that answer?

A. I mean by that, that the cylinders were replaced, but not entirely. The cylinders had been broken by the ice and the liners of the old cylinders were removed because they were new, and put into the new cylinders.

(Deposition of Mr. Baxevanis.)

Q. In other words you had new casings?

A. Yes, new casings.

Q. And the old liners which were all right were put back into the new casings, is that correct?

A. That's right.

Q. Is there nothing between the liner and this water chamber?

A. Here at the bottom of the drawing there were some elastic rings or rubber rings for the purpose of keeping the water chamber watertight.

Q. Well, this tube that you have drawn goes through the outer casing?

A. Yes, on the outside there is a rubber gasket which [536] makes it watertight; that is to prevent the water from coming in.

Q. It goes through a hole in the outer casing?

A. Yes.

Q. And then through a hole in the liner?

A. Yes, it is screwed there.

Q. When we talk about a tube, what sort of a tube do you mean? What is it made of?

A. A copper tube. The tube itself is made of copper, but the equipment here is made of steel (indicating).

Q. In other words through your casing, through the water chamber and into the liner and through the liner you have a steel tube?

A. Yes. The tube itself is made of copper, and when it reaches the connection here near the casing the copper ends, and then the other thing is made of steel.

(Deposition of Mr. Baxevanis.)

Q. In other words the tube that goes through into the piston chamber is steel?

A. That's right. It is made of steel, yes.

Q. Is that flexible? A. No.

Q. Now you said the yard removed the liner?

A. Yes.

Q. Did they replace it, too?

A. Yes, they were replaced, but the connection here, the connection was not well made and they had filed it a [537] little bit.

Mr. Silverthorne: I object to the answer as not responsive."

Mr. Hokanson: I renew Mr. Silverthorne's objection on page 98, at the top thereof.

The Court: I think it should be overruled. It is so ordered.

At this point we will take a ten minute recess.

(Recess.)

Mr. Hokanson: May it please the Court, Mr. Howard on Saturday indicated that he would have a witness on Monday to conclude his defense to the libel. I have some witnesses in rebuttal, two of whom are engaged in important work at the Winslow yard, and I have kept them over purposely to put them on. It would be a great convenience if we could put those witnesses on at this time. I feel that we shouldn't be required to keep them here indefinitely waiting upon Mr. Howard's witness.

The Court: How can you excuse those witnesses if they are rebuttal witnesses? You cannot tell what

(Deposition of Mr. Baxevanis.)

Mr. Howard's witnesses are going to testify to, can you?

Mr. Hokanson: The rebuttal which these witnesses [538] will testify to, I believe will have no relationship to the testimony presented by Mr. Howard's witness, although that is just speculation on my part. He has just indicated to me that the witness he has in mind will testify as to the method of keeping accounts and the reasonableness of the charge.

The Court: I say to you that it is extremely important to have witnesses' testimony brought on in its logical order, and local witnesses should conform their convenience to the necessity of the trial.

While I have no desire to interfere with the witnesses, this is a lawsuit in which the libelant is the suing party, and somebody probably will be aggrieved at the decision when it is made and returned —at least, I assume they will be. I never knew a case where there were two litigants and one of them recovered or failed to recover in the decision of the Court that it was not aggrieved at the decision. I think it is bad policy to excuse witnesses if you can avoid it, Mr. Hokanson.

Mr. Hokanson: I don't propose to excuse them, Your Honor. I need their testimony, but Mr. Howard is now proceeding out of order. He is holding up the conclusion of his defense to the libel, and I submit that no good reason has been offered for the delay of [539] that case.

(Deposition of Mr. Baxevanis.)

The Court: The Court allowed it last week to accommodate a witness who Mr. Howard gave the Court the impression got away from him. Now today the witness should be recovered.

Mr. Howard: May it please the Court, we have contacted this witness this morning, and in all fairness to the Court and to opposing counsel, I should state that I am not certain that I will be able to bring that witness on today. I hope to bring him on after lunch.

The Court: Where is the witness?

Mr. Howard: The witness is in Seattle. I conferred with him this morning.

The Court: The Court requires that you be ready to proceed at two o'clock with the witness so far as further proceedings out of order are concerned. I ask Mr. Hokanson to postpone until then the question of whether or not his witnesses should be excused.

Mr. Hokanson: Very well. I am satisfied that the rebuttal testimony which these two witnesses would give would not relate to the matter which Mr. Howard will introduce at two o'clock.

The Court: I prefer not to receive testimony out of order unless it is absolutely necessary. [540]

Mr. Howard: I wish to state to the Court that I have no objection, if it would be agreeable to the Court, to accommodate the witnesses and take that testimony now.

(Deposition of Mr. Baxevanis.)

The Court: I prefer not to do it unless it becomes necessary.

Mr. Howard: We will resume reading the deposition at page 98, the second question.

"Q. Chief, what is the Clayton boiler?

A. That is a boiler for the purpose of heating—that is for the purpose of heat, radiators to supply heat to the cabins, etc.; also for the purpose of heating the holds where the merchandise is stowed.

Q. Is there a pump connected with that boiler?

A. There is a feed pump for the purpose of circulating the water.

Q. Was any work done by the yard on that?

A. The shop took the entire thing from A to Z, did everything on it; but the job was not properly done.

Mr. Silverthorne: I object to the last part of that answer and ask that it be stricken as not responsive." [541]

Mr. Hokanson: I move to strike the last part of the answer as not responsive.

Mr. Howard: I agree that was not responsive.

The Court: That is stricken.

"Q. Now did the Commercial Ship Repair Yard do any work on the steering gear and on the telemotor system of the ship?

(Deposition of Mr. Baxevanis.)

A. We had nothing to do with those parts. The Commercial Ship Repair Company obligated themselves to put those things into proper working order."

Mr. Hokanson: I object to that answer on the ground that it involves a conclusion by the witness.

The Court: That will be stricken.

"Q. The steering gear or steering engine and telemotor system, would that be within your jurisdiction as the engineering officer of the ship?

A. Well, of course those parts are worked from on deck, but in case of damage or anything being out of order it is up to me to see to it that they are properly repaired. [542]

Q. Was any report made to you by the Commercial Ship Repair people of the condition of the steering gear and the telemotor system?

A. They didn't make any report to me, nor did they ask me to sign any paper. As a matter of fact I didn't sign any paper regarding the proper working of anything; they did not deliver anything to me."

Mr. Hokanson: I move to strike the last sentence as not responsive.

(Deposition of Mr. Baxevanis.)

The Court: It seems not responsive to the Court. It is stricken.

"Q. Do you know whether or not the telemotor oil was removed from the telemotor system at the Commercial Ship Repair Yard?

A. First of all I want to explain this, whenever a shop, a repair shop undertakes to do anything I have nothing to do with it at all. They simply take the parts of the machine or other parts, they take them to the shop and do whatever there has to be done to them. I am not interested in their work at all.

Mr. Silverthorne: I object to that answer [543] as not responsive."

Mr. Hokanson: I renew Mr. Silverthorne's objection that the answer is not responsive to the question, and I move to strike the entire answer.

The Court: Do you contend that any part of it is responsive?

Mr. Howard: No, Your Honor, I concede that that answer is not responsive.

The Court: It is stricken.

"Q. Do you know, Chief, of your own knowledge whether or not the telemotor oil was removed from the telemotor system?

(Deposition of Mr. Baxevanis.)

A. That I don't know; I don't know what they did. I do know that they had oil but whether or not they removed any oil I don't know.

Q. Now Chief, you left the Commercial Ship Repair Yard on October 16th according to the log, is that correct? A. Yes sir.

Q. I note in the log that you have entered the fuel consumed on each day. Does this figure under "Summary" opposite the word "Summary" mean the fuel the ship actually [544] consumed?

A. Yes, that's right.

Q. Well, the fuel consumption from these figures would appear to be about 16 barrels per day, is that correct?

The Interpreter: On an average?

Mr. Baillie: Yes.

A. Yes, about. Of course that depends on the quality. Well, that was the consumption taking into consideration also the auxiliary motors.

Q. How long did you remain with the Urania?

A. From August 1st until February 1st.

Q. Would you say that that 16 barrels per day would be about average during the entire time you were aboard? A. Yes.

Q. From the 16th of October when you left the Commercial Ship Repair Yard until the 26th of October I note from the log that you were running the engines at about 288 or 290 revolutions per minute, is that correct?

A. Yes, I did that because the engines had just

(Deposition of Mr. Baxevanis.)

come out of the repair shop and I did not want to strain them."

Mr. Hokanson: Move to strike all but the answer "Yes" as not responsive.

Mr. Howard: I submit that is all part of the question previously asked the witness.

The Court: The Court will not strike that.

"Q. What would the normal R.P.M.s be?

A. 325 R.P.M. Well, the maximum would be 325 R.P.M.; the average would depend on the speed and the economic consumption that would be required. I would say 310 or 315 R.P.M. That depends mostly on the speed.

Q. I refer you to the entry in your log for October 26, 1948. This is in Greek, is it?

A. Yes.

Q. Will you translate that entry for us, please, and read it into the record?

A. (Witness translating from entry): "In view of the fact that the engines were listing on account of the rough weather or the rough seas the number of R.P.M.s go up and down. About 3:20 p.m. I ascertained that the number of R.P.M.s of the engine had decreased, and I was obliged to stop the engine for the purpose of finding out what was the cause of such a decrease in the R.P.M.s Then after stopping the engines I started to dismount the gov-

(Deposition of Mr. Baxevanis.)

ernor right away. After the dismounting of the governor I noticed that the gear, or teeth of the gear were worn out, which was caused by the improper functioning or working of the engine. Then I ascertained the cause of this. Then I put the engines to [546] 150 R.P.M. for the purpose of reaching the nearest port in order to change the gear in question. I started the engine at 11:30 p.m." That is all.

Q. What first caused you to think there was something wrong with the engine, Chief?

A. The number of R.P.M.s, and the noise that it made.

Q. And when you heard the noise what did you first do?

A. The first thing I did was to stop the engine.

Q. And then what did you do?

A. I dismounted the engine for the purpose of finding out the cause of the noise. Well, I changed the oil and also the filter in the engine, but I did not put this in the log here.

Q. And how did you discover that these gears were worn?

A. I dismounted them and I saw it, and then I heard the big noise they were making.

Q. Referring to Respondent's Exhibit K for Identification, will you indicate which gears you are talking about?

A. The gear that is on here (indicating).

Q. Indicating the gears at the base of the vertical shaft, is that correct?

(Deposition of Mr. Baxevanis.)

A. Yes, two gears here.

Q. Did you examine the gears at the top of the vertical shaft?

A. Well, I examined the upper gear and there was [547] nothing the matter with it except the nut here which was a little bit loose and I tightened it. The upper gears were also worn out but not as much as the lower gear. That was not a thing of great importance. The worn out part of the upper gear was not anything of importance. The big noise was being made by the lower gear.

Q. Now, after you discovered this, Chief, you slowed the engines, is that correct?

A. I stopped the engine, then I changed the oil because the oil had some iron filings in it.

Q. Did you report this difficulty to the captain?

A. Yes, I made my report immediately to him.

Q. And what did you advise him to do?

A. I advised the captain to put in to the nearest port.

Q. And did you subsequently put into a port?

A. Yes, then we went to the nearest port which was 65 miles away.

Q. And that was Manzanillo, was it?

A. Yes.

Q. Was any work done on the engines there?

A. Yes.

Q. What work was done?

A. The gears were changed.

Q. By whom?

(Deposition of Mr. Baxevanis.)

A. By the mechanic expert of the Union Diesel Company. [548]

Q. Did you help him in the work?

A. Yes, I simply helped him under his own directions.

Q. And do you know what he did?

A. For example he changed the worn out gears; he regulated the engine and also the governor.

Q. Did he increase the lubrication of the gears?

A. He put some tubes or pipes in to increase the lubrication, yes.

Q. And after this was done the ship then sailed again, and where did you go?

A. Well, we sailed for Long Beach.

Q. And was any further work done on the engine there?

A. Yes, the engine was dismanteled; the entire pump of the boiler was changed; that is, a new pump was put on board.

Q. I should have asked you, prior to your arrival at Long Beach did you have any further difficulty with the engine?

A. Yes, we did have some more difficulties, and the log will speak for itself. The gears became worn out again.

Q. Were you able to proceed all the way to Long Beach under your own power?

A. No. When we were two days out of Manzanillo the gears were worn out again, and we stopped the engine; then a tug came along and towed us into port. [549]

(Deposition of Mr. Baxevanis.)

Q. When you discovered the gears were worn out again did you report that to the captain?

A. Yes, I advised the master immediately, and I stopped the engine.

Q. Was the Union Diesel man on board at that time? A. Yes.

Q. What did you say to the captain?

A. I told the captain, or the master that the gears had become worn again because they were making the same noise.

Q. Was it possible to operate the engine?

A. I did not want to go on with the engines because the oil was full of iron filings which I noticed, and I did not want to ruin the entire engine by going on.

Q. What do you think would have happened if you had operated it with the iron filings in the lubricating oil?"

Mr. Hokanson: I object to that question on the ground that it is speculative, and involves the opinion of the witness, and it is not relevant here.

The Court: Overruled.

"A. I would have ruined the engine. That is, the [550] filings, the iron filings would have ruined the filter and so forth; and of course when there was no lubrication the parts would become more worn out. There was oil but it was dirty and full of iron filings.

(Deposition of Mr. Baxevanis.)

Q. Had you changed the oil at Manzanillo?

A. Yes. After leaving Manzanillo, for the sake of precaution I kept the engine at 150 R.P.M., keeping the reserve power in case of any emergency, in case of a sudden storm or some other thing. Then I would be able to increase the power of the engine.

Mr. Silverthorne: I object to the answer as not being responsive."

Mr. Hokanson: I renew Mr. Silverthorne's objection. The question is, "Had you changed the oil at Manzanillo?" and the answer goes into some matters which are not embraced by that question.

The Court: The answer is "Yes," and the rest of the answer from there on will be stricken.

"Q. At what time are you talking about now?

A. After I left Manzanillo.

Q. I understood you to say that the Union Diesel man [551] had replaced the gears at Manzanillo?

A. Yes. He put in new gears, yes.

Q. And at Manzanillo you changed the oil, too, is that right? A. Yes. Also the filter.

Q. Well, then your log shows that for the first full day of sailing after leaving Manzanillo to go to Long Beach you operated her at 300 R.P.M. I am trying to understand what you meant when you said you did not operate her at more than 150 R.P.M.

(Deposition of Mr. Baxevanis.)

A. (Consulting logbook): After leaving Manzanillo, yes; after the gears were changed, yes, we were navigating even at 325 R.P.M. in order to make a resistance test.

Q. Then it was after you discovered that the gears had become worn again that you reduced it to 140 R.P.M., is that correct? A. Yes.

Q. And finally you decided that you couldn't operate it at all, is that right? A. Yes.

Q. Did you consult with the Union Diesel man at that point? A. Yes.

Q. And did he concur in your decision that you could not operate the engines?

A. Yes, he even advised his own company.

Q. Now, during the time you were at Long Beach were [552] you aboard the ship while the repairs were being made? A. Yes.

Q. Do you know of your own knowledge what was discovered to have been the cause of the wearing of these gears?"

Mr. Hokanson: I object to the question on the ground that it involves an assumption of fact that a cause was established.

Mr. Howard: If the Court please, the witness is asked whether of his own knowledge he knows what was discovered to have been the cause of the wearing of the gears. It seems to me that is a very appropriate question after he has established he was pres-

(Deposition of Mr. Baxevanis.)

ent during the course of the repairs at Long Beach. I don't see that there is any assumption of fact involved there that would make the question objectionable.

The Court: The objection is overruled. I have read forward and the last question and answer at the bottom of the page, if they are objected to, I am not so sure about those.

"A. It was discovered that the cause of the wearing out of these gears had been the infiltration of [553] seawater which had destroyed the viscosity of the oil.

Q. And do you know of your own knowledge how that seawater got into the oil?

A. It came from the oil cooler which had a leak.

Q. Was there one or more leaks?

A. I did not see it but I was told that the cooler had about 15 leaks or holes. The people of the Union Diesel took the radiator or cooler to the shop and they told him what they had found, so I am relying on what they told me. This was caused by the fact that the radiator cooler had not been cleaned the first time because the cause of it probably must have been the rust.

Mr. Silverthorne: I object to the last part of that answer as not being responsive."

Mr. Hokanson: I object and move that the whole

(Deposition of Mr. Baxevanis.)

answer be stricken on the ground that it is entirely hearsay, and I move further that the answer to the previous question be stricken on the ground that the witness has subsequently established by his answer that he did not know of his own knowledge what the condition of the oil cooler was.

The Court: The last question on page 108?

Mr. Hokanson: I submit that the answer beginning [554] "It was discovered"——

The Court: "Do you know of your own knowledge how that seawater got into the oil?" Do you object to that because it developed that he did not know of his own knowledge by reason of what he said?

Mr. Hokanson: That is right.

Mr. Howard: If the Court please, I concede that the last answer, the answer on the last two lines of page 108 and extending on to page 109, is objectionable, but the previous answers, I believe, the witness has testified to things within his own knowledge.

The Court: He has been asked whether he knew this of his own knowledge, and he said yes, but the latter question and answer shows that is not correct.

Mr. Howard: That is only as to the leaks in the lubricating oil cooler, which he said he did not see and it was reported to him, but he is qualified to testify as to what he found as to the galling of the gears, which is related by some testimony as to the leaks.

Mr. Hokanson: It is quite apparent from the

(Deposition of Mr. Baxevanis.)

witness' testimony that when he answers the first question about his knowledge of what was discovered to have been the cause, he says "It was discovered," and that necessarily is a hearsay statement. He has not [555] established by his own testimony that he independently ascertained the cause. His answers to the subsequent questions show that he is basing them on what somebody else said. I submit therefore that his answers be stricken.

The Court: Is there the deposition of anyone who established a cause of his own knowledge?

Mr. Howard: Yes. We will offer further testimony on the leaks in the lubricating oil.

The Court: This objection is sustained. Beginning with the question "Do you know of your own knowledge what was discovered", that question, slightly below the middle of page 108, and the remainder of that page and down to the end of the answer ending "because the cause of it probably must have been the rust," at the top of page 109 will be stricken.

"Q. In your experience, Chief, is it possible, assuming well cleaned and sound tubing through which the oil circulates in the cooler, that holes could develop in that tubing from let's say the 16th of October on through to the 26th of October?

A. Well, I want to say that if the rust had not been cleaned out, that rust would cause holes or leaks in the [556] tubes.

(Deposition of Mr. Baxevanis.)

Mr. Silverthorne: I object to that as not responsive."

Mr. Hokanson: I object to that as not responsive.

Mr. Howard: I submit that is responsive to the question.

The Court: That is sustained. I think it is more directly answered down below.

"A. The answer is no, if the tube had been in good condition.

Q. Now Chief, was anything discovered to have been wrong with the No. 2 cylinder?

A. I did not find any difficulty in the cylinder."

Mr. Howard: I concede the rest of the answer is not responsive, after the first sentence, and I am willing to have it stricken, starting after the first line on page 110.

The Court: It will be stricken. The remainder of the answer there in question will be stricken, from the [557] first line on page 110.

"Q. In cylinder No. 6? A. Yes.

Q. Well, then, with respect to cylinder No. 6 did you find anything wrong with it?

A. Yes, No. 6.

(Deposition of Mr. Baxevanis.)

Q. And what was the defect?

A. The defect was that in the oil tube connection here the gasket or equipment here was not watertight, as some water was leaking out of it. I simply tightened it, that's all.

Cross-Examination

By Mr. Silverthorne:

Q. Chief, was the Urania the first time you had been employed in the capacity of chief engineer on a diesel powered ship?

A. No, I had worked before on the Princess Elizabeth.

Q. I don't believe it was established, Chief, where you were born?

A. I was born in Rumania.

Q. Are you a Rumanian citizen now? [558]

A. No. I am a Greek citizen.

Q. Do you read English?

A. Very little.

Q. Chief, you testified before that the ship's crew, including yourself, never did any work on this cooler which [559] you have drawn in Respondent's Exhibit L for Identification?

A. Yes, that is correct. That is we did not do any repair work on it.

Q. Then you never cleaned the pipes leading into this cooler at all?

A. Yes, we did clean and wash them on board.

(Deposition of Mr. Baxevanis.)

Well, that oil tube here in the diagram has nothing to do with the cooler itself. Please don't confuse the radiator with this oil pipe here.

Q. I understand. My question is did you clean the water pipes leading into the cooler?

A. No. The unit and the cooler itself was taken care of by the shop.

Q. I understand. My question is, did you clean the water pipes leading into the cooler? That is the pipes from outside leading into the cooler?

A. Yes, the outside pipes.

Q. The crew cleaned those?

A. My personnel did that.

Q. And when did they clean those?

A. When we were in Seattle.

Q. When you were in the repair yard at Seattle, that is the Winslow yard at Seattle?

A. Yes.

Q. When you were talking about the cylinders earlier [560] you mentioned that the Commercial Ship Repair Yard installed the liners in the cylinders. That is all they did in regard to the cylinders, is that correct? A. Yes.

Q. When you described the breakdown of the telemotor you said that it didn't work correctly. Could you tell us why it didn't work correctly and what was the cause of the breakdown?

A. It was some electrical part of it which did not work, and the electrician repaired it.

Q. Who was this electrician that repaired it?

A. Of the shipyard.

(Deposition of Mr. Baxevanis.)

Q. Of the Commercial Ship Repair Company?

A. Yes.

Q. This was after the breakdown at sea?

A. The first breakdown, yes.

Q. Where did the Commercial shipyard electrician repair this telemotor? Was it at Port Angeles?

A. Port Angeles.

Q. Now when you referred to the log for October 26, 1948, the first entry that you read said that the ship was listing because of rough weather, and that the R.P.M. of the engine varied because of this listing, is that right?

A. Well, it was a small list and the number of R.P.M. varied. [561]

Q. But you were encountering rough weather at that time, is that correct?

A. Well, it was average weather.

Q. Then the entry in your logbook is incorrect, is that right?

A. Agitated sea—well, it is not a high sea, you know.

Mr. Baillie: Swells?

A. More than swells. Agitated sea we call it, not heavy seas; between a swell and a heavy sea.

Q. Now, Chief, I believe you said that the first warning you had of the breakdown of this engine was the indication of the R.P.M. and the noise it was making, is that correct? A. Yes.

Q. Did you have a maintenance manual put out by the Union Diesel Company for use on this engine? A. Yes.

(Deposition of Mr. Baxevanis.)

Q. Was it printed in English? A. Yes.

Q. Was the Urania fitted with the usual standard gauges and thermometers?

A. Yes, and I had those precision instruments checked up in the Winslow yard and also in Long Beach.

Q. Did the engineer on watch check those instruments daily?

A. Yes, and it is also reported in the engine-room log. [562]

Q. And these instruments did not indicate anything wrong with the engine prior to October 26, 1948?

A. No, they did not indicate anything wrong.

Q. Did you have a copy of the Coastal Pilot, that is a book, aboard?

A. It is not within my province; I didn't have it.

Q. Did you make any check to determine if repair facilities existed at Manzanillo before you advised the captain to put into Manzanillo?

A. I did not do that, but the master made inquiry by radio.

Q. After the telemotor was repaired did it function all right?

A. Yes, but a few hours after it broke down again.

Q. What was the name of the Union Diesel man who came aboard at Manzanillo and made the trip from Manzanillo to Long Beach with you?

A. His name is an easy one but I don't remem-

(Deposition of Mr. Baxevanis.)

ber the name just now. Give me a chance to find a memorandum.

Mr. Baille: Was it Cross?

The Witness: Yes, Cross. it was Mr. Cross.

Q. Do you remember the date that you arrived at Long Beach?

A. I believe we arrived on November 11th, but I want to make sure. (Consulting logbook) November 12th. [563]

Q. Did the ship proceed first from Manzanillo to San Pedro and then to Long Beach?

A. Well, really I don't know myself. I believe that San Pedro and Long Beach are the same thing to me in my own mind.

Q. Before the ship entered the Craig Shipbuilding Yard in Long Beach did she dock or anchor at San Pedro?

A. We anchored at a certain point; when we got clearance papers we moved forward and went to the shipyard.

Q. How long did you anchor at this certain point? A. A few hours.

Q. Was the Urania equipped with an electric alarm system that would ring when the temperature of the water or oil reached a certain point?

A. Yes, of course.

Q. And this alarm never sounded prior to the breakdown on October 26, 1948, is that correct?

A. No.

Q. Chief, you have testified that at Manzanillo and at Long Beach where the repairs were made

(Deposition of Mr. Baxevanis.)

on the Urania, they were actually done by the Union Diesel people, is that correct?

A. Yes sir.

Q. Then you yourself don't actually know what the cause of the breakdown was since all you know is what they [564] told you, is that right?

A. I personally did not verify the cause of the breakdown myself; they informed me.

Q. Chief, could you describe briefly to us what daily maintenance procedure you had performed in the engineroom in connection with the cooling and lubricating system of the engine from October 16 when you sailed until you arrived at Long Beach?

A. I checked the temperature of the cooler.

Q. Yourself?

A. Either I or the engineer on watch. I have no watch myself. My men would supervise the temperatures and the pressures. They would put fuel oil into the tanks, and they supervised in a general way the proper working of the engine, and if anything was wrong they would report it to me, and if there was something that didn't work right, that is either the water or the oil, then that would constitute an alarm.

Q. And you have said that there was no alarm prior to October 26, 1948, is that correct?

A. No, the instruments did not give any alarm. They had been checked up and repaired by the shipyard.

Mr. Howard: I submit that is a proper question. [567]

The Court: "No." will stand, and the remainder of the answer will be stricken.

Mr. Hokanson: I believe I didn't finish the answer. "A. (cont'g) Then many other defects were shown later on. For example, I examined the tubes of the boiler later on and I found that they were broken and out of order." Does your ruling go to that?

The Court: Yes.

Mr. Howard: I will concede that the remainder is not responsive.

The Court: That will be stricken.

Mr. Howard: That concludes the deposition.

The Court: Each of these depositions is received as a part of respondent's and cross libelant's case in chief.

Mr. Howard: I offer A-14, consisting of five diagrams, at this time.

The Court: Is there any objection?

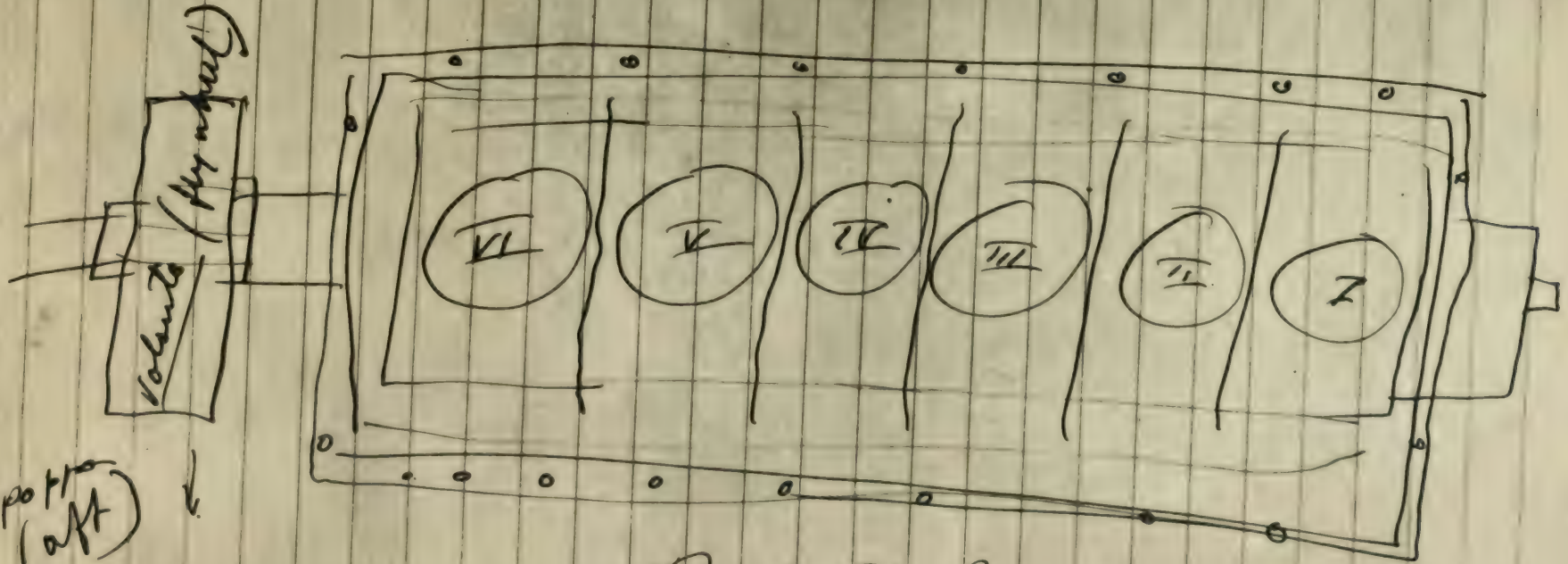
Mr. Hokanson: I have no objection, your Honor.

The Court: A-14 is admitted as to each and all its parts.

(Respondent's Exhibit A-14(1), A-14(2), A-14(3), A-14(4) and A-14(5) received in evidence.)

12322

CAUSE 15266
RESPONDENT EXHIBIT A-14(l)
ADMITTED APR 22 1949



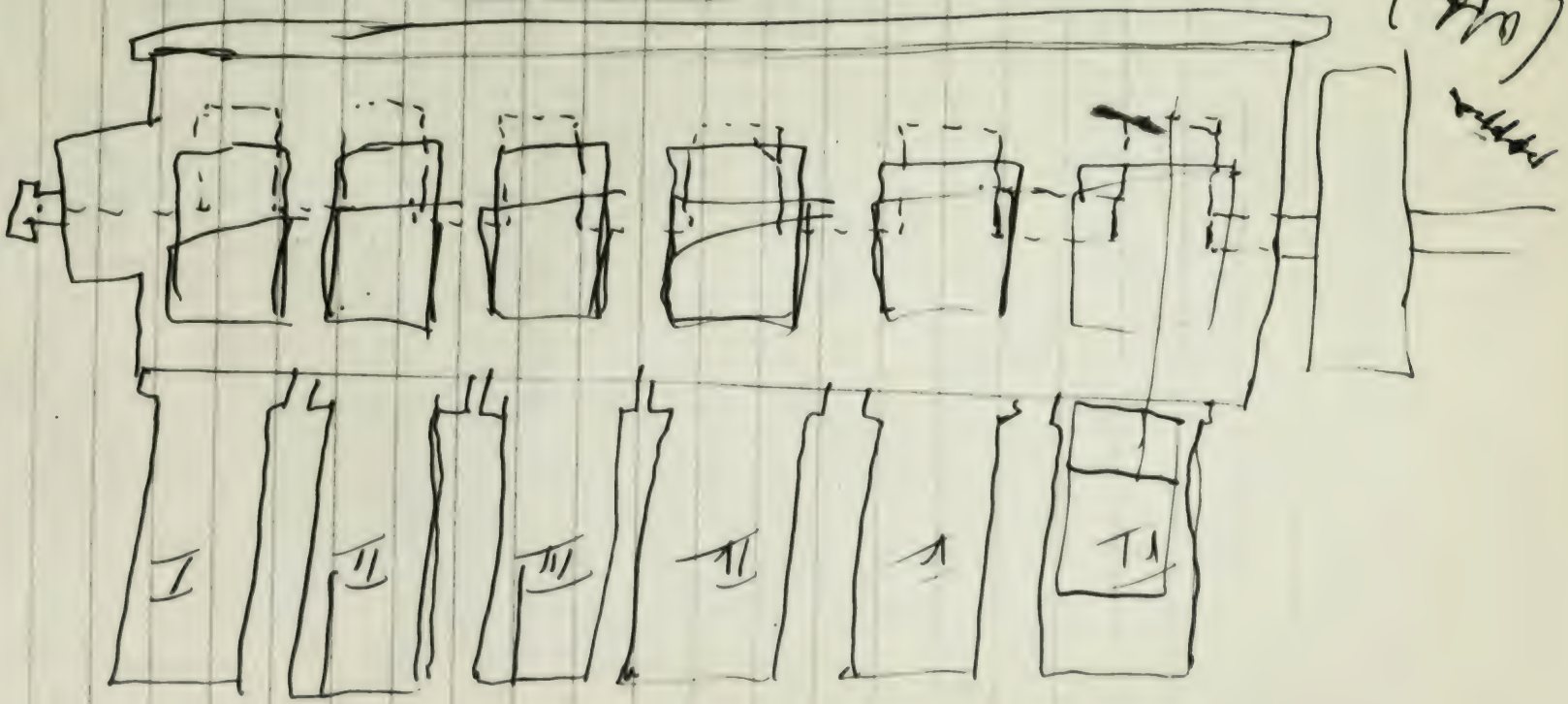
Resp. Ex. I for Id.
2/24/49
EC J

0052

CAUSE 1526

RESPONDENT EXHIBIT A-14(2)

ADMITTED APR 11 1949

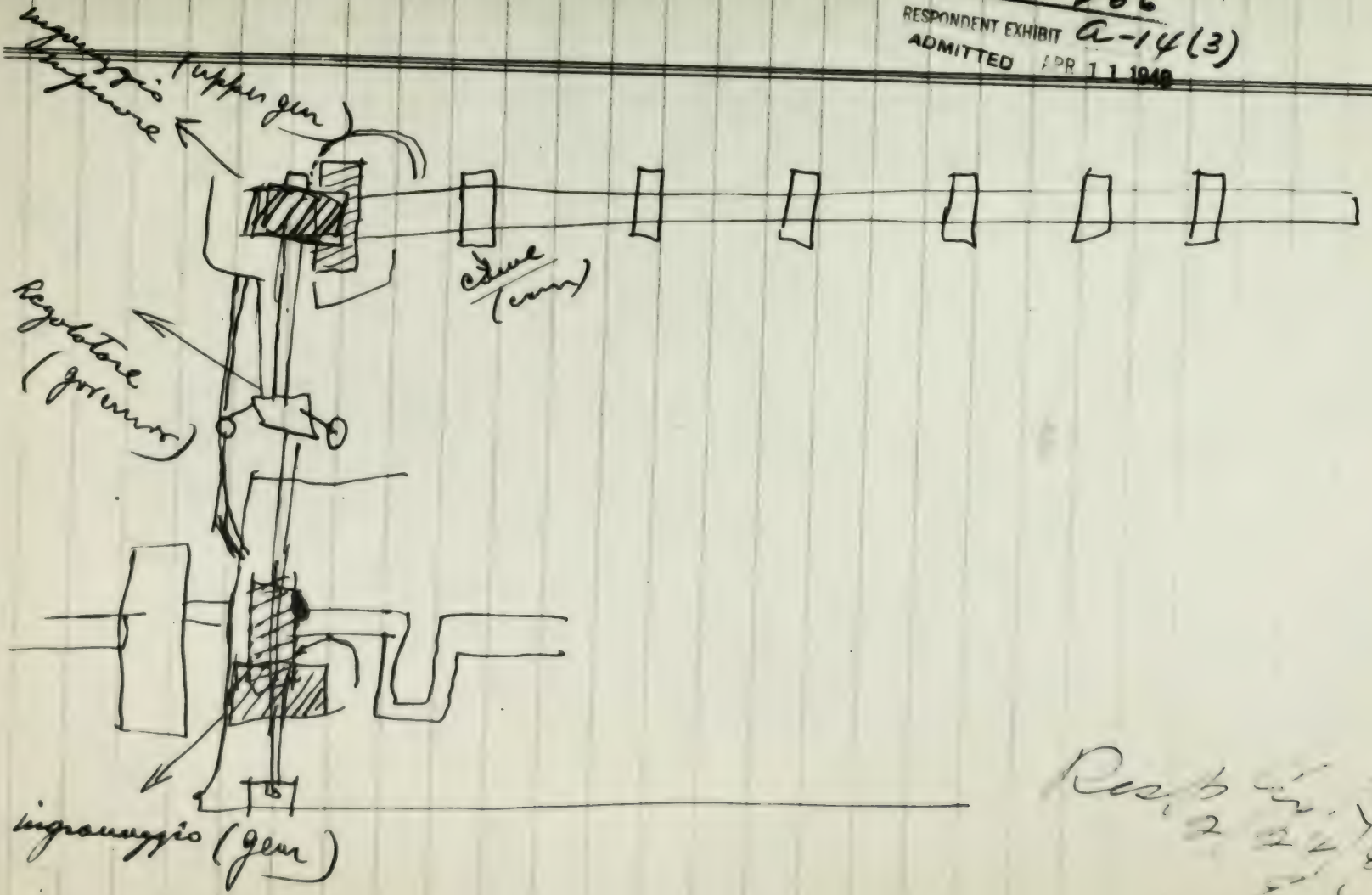


Rock Eq. & Loc. St

2/24/49

ET

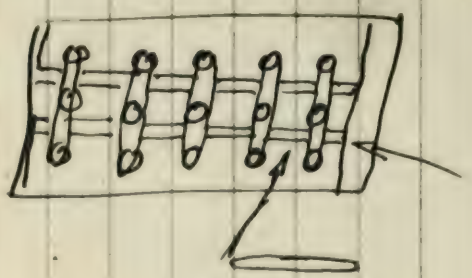
CAUSE 12-266
RESPONDENT EXHIBIT A-14(3)
ADMITTED APR 11 1949



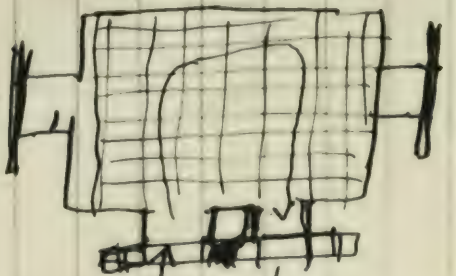
CAUSE 12266
RESPONDENT EXHIBIT A-14-(4)
ADMITTED APR 11 1949

Radiatore di olio oil Cooler

sopra (top part)



olio lub. (oil pipe)



olio lub. (oil pipe)

acqua di mare (sea water)

acqua di mare (sea water)

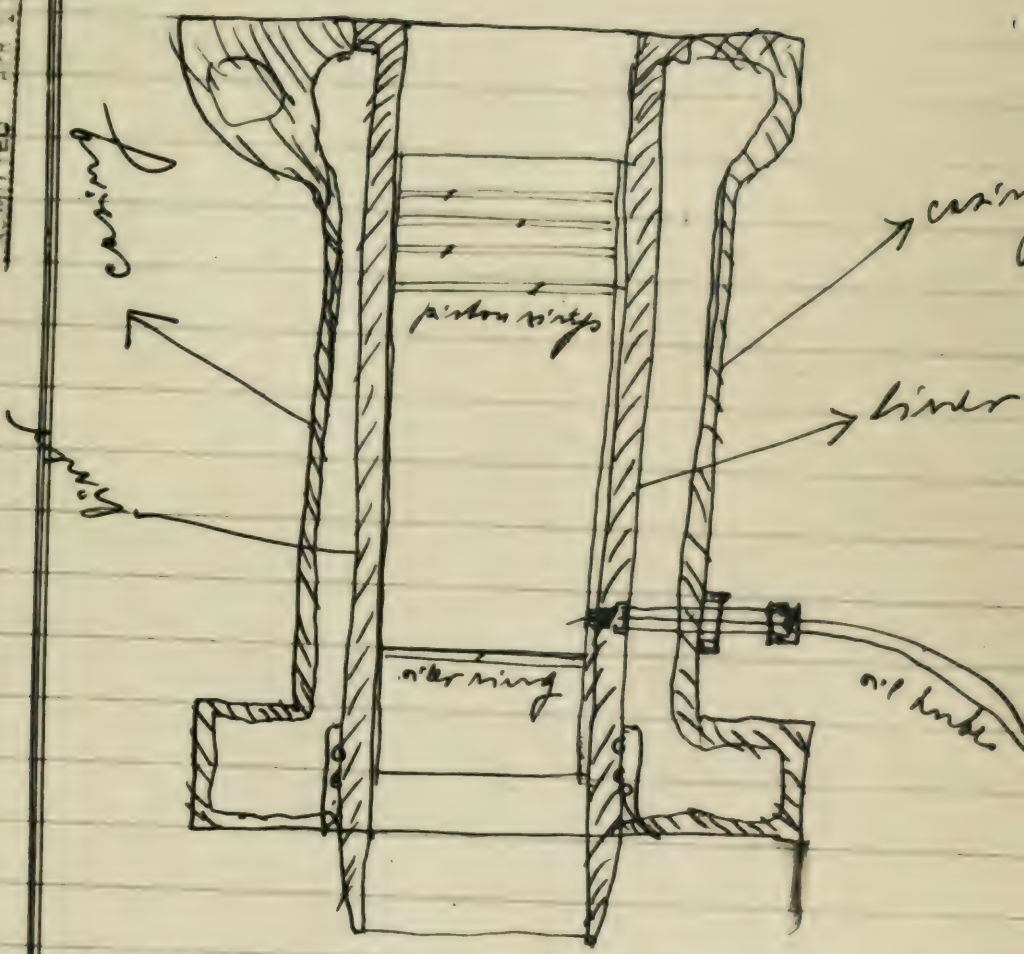
sotto (lower part)

Rad Eq L for DI
2/24/47
E.E.F.

752

CAUSE 15276
RESPONDENT EXHIBIT A-14 (5)
ADMITTED JUL 11 1949

Top



Resp. Ex. No. Four
2/24/49

Mr. Howard: A-8, the logbook, has been admitted.

The Court: That is correct. A-9, A-10 and A-11 [568] have had no ruling.

Mr. Howard: We will offer further testimony on those. A-12 and A-13, the engine logs, have been admitted, according to my records.

The Court: A-12 and A-13 have been admitted, but not A-9, A-10 and A-11.

Mr. Howard: I would now like to read the deposition of James D. Clarke.

DEPOSITION OF JAMES D. CLARKE

"Q. (By Mr. Howard): Will you state your full name, please? A. James D. Clarke.

Q. What is your address?

A. 1215 Grove Street, San Francisco.

Q. What is your occupation, Mr. Clarke?

A. Ship Superintendent, Marine.

Q. And by whom are you employed?

A. Commercial Ship Repair, Inc.

Q. Whereabouts?

A. San Francisco, California.

Q. How long have you been employed by that company?

A. Since November, 1947. I believe that is correct.

Q. Would it have been November, '48?

A. 1948, last year.

Q. Where were you employed previous to that

(Deposition of James D. Clarke.)

time? A. Independent surveyor. [569]

Q. In what locality? A. Seattle.

Q. For how long?

A. A period from 1946 to November, 1948.

Q. And will you state briefly your experience in connection with water transportation ship repairs prior to that date?

A. Yes, before the war I was employed as an engineer for approximately ten years.

Q. Holding what license? A. Chief.

Q. Diesel or steam?

A. Diesel and steam, and two and a half years with Joshua Hendey Iron Works, as Superintendent on the assembly floor and outside erection; the period from 1943 until the end of the war with Poole McGonigle & Jennings Corporation, Portland, Oregon, as Port Engineer at Seattle until June, 1946.

Q. Then, as I recall, you stated you were an independent surveyor from June, '46 to November, '48? A. That is right.

Q. Mr. Clarke, in October, 1948, were you called upon to perform some services in connection with the tanker Urania? A. Yes, I was.

Q. At whose request?

A. General Steamship Corporation.

Q. And what did you do at that time?

A. Made a general survey, or a superficial survey, rather, of the boiler, the Clayton boiler, on the Urania. [570]

(Deposition of James D. Clarke.)

Q. Where was the vessel located at that time?

A. It was located at the Winslow Yard.

Q. And do you recall about what date that was?

A. No, not offhand, because I don't have my records with me.

Mr. Howard: At this time, I would like to ask, Counsel, for enlightenment, if he will produce for us photostatic copies of the reports rendered by Mr. Clarke to the General Steamship Corporation, Ltd. or to the owners of the tanker Urania which he obtained on motion for production of documents directed against the Respondent and Cross-claimant since inadvertently our carbon copies of such documents which were produced on motion for production have been left in Seattle and are not available at this time. Mr. Hokanson, do you have those documents with you?

Mr. Hokanson: I do.

Mr. Howard: Would you mind producing them?

Mr. Hokanson: I have no objection. This is off the record.

Mr. Howard: Can we stipulate that we will have the witness identify these and substitute the copies we have?

Mr. Hokanson: So stipulated, the photostatic copies may be substituted.

Q. (By Mr. Howard): Mr. Clarke, handing you what has been marked for identification as Claimant's Exhibit [571] SF-1"——

Mr. Howard: That is Identification A-6.

(Deposition of James D. Clarke.)

——"I will ask you to read that and tell us if you can what that is.

A. Yes, that is correct.

Q. What is that, sir?

A. That is my report to General Steamship Corporation, and signed by me.

Q. And that is the report that you previously stated was made while the Urania was at Winslow?

A. That is right."

Mr. Howard: I now offer Exhibit A-6. That is the Winslow survey.

Mr. Hokanson: No objection.

The Court: Admitted.

(Respondent's Exhibit A-6 received in evidence.)

RESPONDENT'S EXHIBIT A-6

James D. Clarke

Marine Surveyor

2606 50th S.W. Tel. AValon 4495
Seattle, Wash. October 16, 1948

M/T Urania

The undersigned surveyor did at the request of the General Steamship Corp. Ltd., of Seattle, Wash. attend the single screw motor tanker Urania as she lay afloat and moored at the Commercial Ship Repair Yard at Winslow, Washington on October 15, 1948 to determine the condition of the boiler and report on same.

Attending

(Deposition of James D. Clarke.)

James D. Clarke for Owners.

James Featherstone for Commercial Ship Repair.

Found—Clayton heating boiler in operation, construction of boiler found to be satisfactory, operation of feed pumps found to be unsatisfactory and in leaking condition.

Recommended—Feed pumps be repacked with Neoprene Rubber diaphram pump plungers. Remove emulsified oil from crank case and replace with new oil. This work accomplished.

Bulkhead in way of ammunition room not removed as per specifications.

That cost of item be deleted from original billing.

/s/ JAMES D. CLARKE,
Marine Surveyor.

JDC:ac

Admitted April 11, 1949.

"Q. Now, independently of this exhibit, Mr. Clarke, will you please state what part of the engine or auxiliaries you examined on that occasion?

A. Only in connection with the Clayton boiler.

Q. And state briefly what the Clayton boiler is.

A. It is merely a heating boiler for heating water in the quarters aboard the ship. [572]

Q. Is that boiler used to heat the coils in the cargo tanks? A. I didn't check on that.

Q. What if anything did you find as to the

(Deposition of James D. Clarke.)

condition of that Clayton boiler?

A. The condition I found as I stated in my report was merely that the plungers were leaking and the packing leaking, and I recommended new Neoprene packing to be installed and that was done before I left the vessel.

Q. Who else was with you aboard the vessel on that occasion?

A. Mr. Featherstone and Mr. Gilmore were there.

Q. And who is the Mr. Gilmore you refer to?

A. Mr. Jack Gilmore, a surveyor in Seattle, Washington.

Q. And was the pump on the Clayton boiler disassembled at the time of your inspection?

A. Definitely not.

Q. What parts if any of the pump were removed?

A. The parts necessary to install the pump packing and plunger packing.

Q. Who accomplished the repairs?

A. The shipyard, I should imagine.

Q. Did you examine the Clayton boiler after repairs had been completed?

A. Only to the fact that there was no further leak found after it was repaired.

Q. Was the pump on the boiler being operated at the time of your examination?

A. Right, yes. [573]

Q. And for how long a period did you observe its operation?

(Deposition of James D. Clarke.)

A. Not very long, just to satisfy myself it was in good operating condition, no leaks observed.

Q. Could you give us any idea in minutes or hours how long it was?

A. Oh, about 15 minutes.

Q. I note that you make a recommendation that emulsified oil from the crankcase be removed and replaced with new oil. Can you state whether that was done?

A. Yes, that was done; definitely done, due to the fact that the packing having leaked, the oil got down into the base of the pump and emulsified. That was definitely removed.

Q. And you had noted the emulsified oil in the crankcase before on your first inspection?

A. That is right.

Q. I note another item in this report, Mr. Clarke, as to the bulkhead in the way of the ammunition room. A. Right.

Q. Did you check that to determine whether that had been removed?

A. Yes, I did. I looked at it.

Q. What did you find?

A. It had not been removed.

Q. And did you make a recommendation as to that item?

A. I recommended that the cost of that item be deleted from the original specification; that was a recommendation of General Steamship Corporation.

Q. And to whom was this report submitted?

(Deposition of James D. Clarke.)

A. Mr. Lund at General Steamship Corporation.

Q. What was your understanding as to who you were representing at the time you made it?

A. Definitely representing General Steamship Corporation.

Q. And were you aware of the relationship, if any, then existing between General Steamship Corporation and the owners of the tanker?

A. Not from exactly knowledge, no. From hearsay I understood that she was owned by certain interests, foreign interests. That is all I knew about it, and furthermore that General Steamship Company had to have the approval to hire a surveyor before I went to work.

Q. Did you submit your statement for services rendered on this survey? A. Yes.

Q. Will you state whether or not you have been compensated for those services?

A. Oh, yes, I have been compensated.

Q. Will you state whether the amount you have charged for the survey accomplished as represented by this exhibit represented the standard customary charge for similar work? A. Yes.

Q. Thereafter, Mr. Clarke, did you perform any further services in connection with the tanker Urania? A. Yes.

Q. And where was the vessel located at that time? A. At Port Angelus. [575]

Q. Can you state about when you performed such services?

(Deposition of James D. Clarke.)

A. Not offhand, until I refer to my records.

Q. I hand you what has been marked for identification, Claimant's Exhibit SF-2, can you identify that? You have not signed any of these documents recently, have you?"

Mr. Howard: I believe that should be "You have not seen any of these documents" rather than "signed."

Mr. Hokanson: That is agreeable with me, that that word be substituted.

The Court: It may be so substituted.

"A. No. This evidently is a copy of the carbon copy, photostatic copy of the carbon copy, as it does not bear my signature. However, that is correct.

Q. Is that the report that you submitted?

A. That is right.

Q. And that is a report of your services while the Urania was at Port Angelus?

A. Yes.

Q. And referring you to the date that instrument bears, does that appear to be the date on which you made an inspection?

A. Yes, that appears as the date. [576]

Q. That is October 18? A. Yes, 1948.

Q. By whom were you requested to make that survey? A. General Steamship Corporation."

(Deposition of James D. Clarke.)

Mr. Howard: I offer Cross Libelant's A-7.

Mr. Hokanson: May it please the Court, I may desire to object to the introduction of that document based upon subsequent testimony of the witness, and obviously he not being here, I have no opportunity to examine him at this time, and the deposition does not show that the offer was made at this point, so that if I may reserve my objection until the conclusion of the deposition on the offer——

Mr. Howard: The witness has identified the document as being his report to General Steamship Corporation.

The Court: Is there any objection that a marine surveyor's report on a survey is not admissible in any case?

Mr. Hokanson: Not on that, Your Honor. I have reference to the contents of the document and as to the witness' testimony with respect to certain conclusions drawn in his survey report, whether that goes to admissibility or weight.

The Court: The objection is overruled. Respondent's [577] Exhibit A-7 is now admitted.

(Respondent's Exhibit A-7 received in evidence.)

(Deposition of James D. Clarke.)

RESPONDENTS' EXHIBIT A-7

James D. Clarke
Marine Surveyor

2606 50th S. W. Telephone:
Seattle, Washington AValon 4495

M/T Urania

Oct. 18, 1948

The undersigned Surveyor did, at the request of the General Steanship Corp. Ltd., of Seattle, Washington, acting as Agents for the Owners of the single screw Motor Tanker Urania, attend the vessel as she lay afloat and anchored on October 16, 1948 in Port Angeles Bay to determine the cause of delay to the vessel, accomplish repairs, and report on same.

Attending: James D. Clarke, representing Owners.
J. H. Woodside, Machinist from Commercial Ship Repair Co.
Lester Short, Electrician from Commercial Ship Repair Co.

On October 16, 1948, the undersigned was contacted by the General Steamship Corp., Ltd., and ordered to proceed to Port Angeles to determine the cause of the trouble reported to have developed in vessels steering gear mechanism. The undersigned contacted the Commercial Ship Repair Co. and requested the services of an Electrician and Machinist to accompany the undersigned to Port Angeles via West Coast Airlines.

(Deposition of James D. Clarke.)

Upon arrival at Port Angeles a launch was hired to transport the workman to the vessel, where upon arrival on board it was found that the steering gear mechanism was oscillating from side to side as much as 60 degrees, the entire system was examined and a broken wire was found in the motor control wiring, from the appearance of this wire it was evident that the break was not complete but would make and break thus causing the controlling motor to hunt, this trouble was corrected and the steering system was thoroughly tested to the satisfaction of the Master and the Chief Engineer.

Log of vessel showed that the steering gear started giving trouble about 3.15 AM Oct 16, 1948, vessel placed on hand emergency steering and headed for anchorage at Port Angeles arriving there about 4.30 AM Oct 16, 1948.

Workman on duty from 11.30 AM to 9.30 PM, Oct 16, 1948

Repairs completed and tested satisfactorily at 7.30 PM Oct 16, 1948

Pilot on board 7.45 PM 10-16-48

Vessel sailed from anchorage at Port Angeles at 8.00 PM 10-16-48

In my opinion the repairs accomplished where of a permanent nature and all of the system working in a satisfactory manner.

JAMES D. CLARKE,
Marine Surveyor.

Admitted April 11, 1949.

(Deposition of James D. Clarke.)

"Q. And what particular parts of the vessel did you survey on that occasion?

A. Only the part involving the trouble I found as stated in the report.

Q. That was what part, please?

A. The steering engine and the helm.

Q. I note the report is dated October 18, but in the body of the report it reads, 'on October 16 the undersigned was contacted by General Steamship Corporation and ordered to proceed to Port Angeles.'

A. That is my date of submitting the report.

Q. You actually conducted the survey on October 16? A. That is right.

Q. Who was with you at that time?

A. I had two men from Commercial Ship Repair Yard who furnished them at my request.

Q. What men did you request from Commercial Ship Repair?

A. One electrician and one machinist.

Q. What did you find as to the condition of the telemotor or steering system when you arrived aboard the vessel at Port Angeles?

A. My opinion on that was the fact that somebody had tried to correct the trouble and had [578] failed, which is only natural with the engineer trying to find out their trouble, that is understood.

Q. Could you state what you found?

A. My findings were only as appear in my report.

(Deposition of James D. Clarke.)

Q. Did you receive any report as to the nature of the difficulty before you arrived aboard the vessel?

A. No. My orders from General Steamship Company were to proceed to Port Angeles and correct the trouble found with the steering gear.

Q. And what did you find in the steering gear?

A. I found, when I went aboard, that the steering gear was hunting from side to side.

Q. To what extent?

A. Sixty degrees port and starboard.

Q. Did you locate the source of the difficulty?

A. Yes, definitely.

Q. What was that?

A. I personally did not locate the trouble, but my men working for me, they found a broken wire, floating break, and they checked the air, bled the air out of the system.

Q. I note that in the report it states that from the appearance of this wire it was evident that the break was not complete but would make and break, thus causing the controlling motor to hunt, is that correct? A. That is right. [579]

Q. You mentioned about bleeding the air out of the system. Is that system controlled by air?

A. No, air getting into the systems will cause it to bounce, in other words.

Q. Did you find air bubbles in the system?

A. No, I did not.

Q. You bled the system?

(Deposition of James D. Clarke.)

A. I bled the system for air, found none.

Q. How long were you engaged in that work aboard the tanker Urania?

A. My report states here, I would have to refer to that. I went on duty at 11:30 a.m. As I recall, it took us an hour to fly down there.

Q. You flew from where?

A. From Seattle.

Q. And when did you leave the vessel?

A. We left there at 9:30 p.m.

Q. Of the same day? A. Yes.

Q. And before leaving the vessel had you tested the steering system?

A. Definitely to the satisfaction of the Master and the Chief Engineer.

Q. Will you state what you found to be the condition of the steering system at that time?

A. At that time, after completing the repairs, I found it to be entirely satisfactory.

Q. What did that test consist of?

A. That test consisted of hand steering and putting it over on the electric steering, operating it from side to side to see it work from the pilot house and the steering wheel. [580]

Q. Was the vessel at anchor or under way?

A. It was at anchor.

Q. Was the steering system tested while the vessel was under way?

A. No, only when we were aboard.

(Deposition of James D. Clarke.)

Q. Did you render a statement for your services rendered?

A. I combined the statement of the two jobs in one.

Q. And then I assume that the charges that you made for this work were reasonable or the standard charge for that type of work?

A. That is right, as I understand it, the General Steamship Corporation received permission to pay the bill.

Q. And you have been paid for this?

A. I have been paid.

Q. The men that went with you to Port Angeles actually performed the repairs, made the repairs?

A. That is right.

Q. And they were from Commercial Ship Repair? A. That is right.

Q. Do you know whether the charges were made for the services of those men?

A. Oh, definitely. I should imagine they would be. Of course, that doesn't come under my jurisdiction."

Mr. Howard: The charges that are referred to there are now covered by Cross Libelant's Exhibit A-5, that [581] has been admitted in evidence.

The Court: The charges are covered by A-5?

Mr. Howard: Yes, Your Honor.

(Deposition of James D. Clarke.)

"Cross-Examination

By Mr. Hokanson:

Q. Mr. Clarke, you are now employed by Commercial Ship Repair, Inc., in San Francisco, California? A. Right."

The Court: Do counsel on both sides agree that concern is the same concern as the libelants' assumed trade name here, and is identical with the same persons as those who are now libelants?

Mr. Hokanson: Your Honor, we will announce for the Court's information that Commercial Ship Repair, Inc., is a California corporation, doing business in San Francisco, California, and is owned by the co-partners E. A. Black and J. J. Featherstone, doing business as Commercial Ship Repair, the libelants in this action.

Mr. Howard: I so stipulate, Your Honor.

"Q. How did you enter into that employment?

A. I entered into this employment by coming to San Francisco looking for a job, found out that Commercial Ship Repair was starting a yard here, and made application for the position and got it.

Q. Your employment, so far as you know, has no relationship to whatever survey you made on the Urania?

(Deposition of James D. Clarke.)

A. Definitely not. When I make a survey, I make a survey independent of anybody's opinion but my own.

Q. And when you were employed by Commercial Ship Repair, Inc., in San Francisco, was any discussion had at the time of your employment with respect to any litigation between Commercial Ship Repair, a co-partnership in Seattle and the Compania Naviera Limitada, a Panama corporation?

A. Definitely not.

Q. So that your employment now is a mere coincidence?

A. That employment is definitely a mere coincidence.

Q. When you visited the Urania at Winslow were you called upon to make a general survey of the work that had been done? A. No.

Q. You inspected only the Clayton boiler?

A. And the collision bulkhead, that is on orders from Mr. Lund, I mean the ammunition bulkhead.

Q. What had to be removed to repack the feed pumps with Neoprene diaphram?

A. Remove the pistons, repack, put in new packing rings, [583] repack the flanges, clean the sump, a matter of about an hour's work.

Q. Did you examine the diaphrams that were in the pump? A. Yes.

Q. Before the new ones were put in?

A. Yes.

Q. What was the condition of the diaphrams?

(Deposition of James D. Clarke.)

A. They were hard, quite hard, the wrong kind of material.

Q. Would your charges for that survey have been different had you found no trouble with the boiler"?

Mr. Howard: That is objected to as immaterial and irrelevant.

Mr. Hokanson: May it please the Court, by that question I merely seek to establish that the survey was ordered by the representatives of the claimant corporation, and we will later demonstrate that this survey was ordered subsequent to the libeling of the vessel.

The Court: The question goes to the matter of credibility of the witness, does it not, regarding the amount of his charges?

Mr. Hokanson: No, Your Honor, I believe not. It is a question of whether his fee as a surveyor would have been the same irrespective of what he found; if [584] he had found everything to be in good order, would his fee have been the same.

The Court: Does it relate to credibility of the witness?

Mr. Hokanson: It does not.

The Court: What does it relate to that is relevant in the case?

Mr. Hokanson: The surveyor by his own testimony was appointed by General Steam to make a survey. A survey was made subsequent to the libel-

(Deposition of James D. Clarke.)

ing of the vessel, and for more reasons than one.

Mr. Howard: If counsel had examined the witness on such points as he just mentioned, I think that might have been appropriate, but I do not see the materiality or the competency of the question that is asked on line 11, page 14.

Mr. Hokanson: There is evidence in the record, Your Honor, to show——

The Court: The objection is overruled.

"A. My survey regardless of one hour or 24 hours, the charge remains the same.

Q. Irrespective of your findings?

A. That is right.

Q. Did you discuss at all with the master of the vessel [585] or with anyone else the matter of the failure to remove the ammunition bulkhead?

A. No, I did not. The master was not aboard at that time.

Q. Was Mr. Harry Williams aboard?

A. No. Mr. Harry Williams was not there. Understand, my orders are simply to report back to General Steamship whether that bulkhead had been removed or not.

Q. Now, with respect to your inspection of the telemotor system at Port Angeles, do you remember who conducted the repairs?

A. Yes, the two men that I had supplied by Commercial Ship Repair, machinist and electrician.

(Deposition of James D. Clarke.)

Q. Do you remember the name of the electrician?

A. He is there in my report, I believe. I would have to refer to the report.

Q. You referred to J. H. Woodside, machinist.

A. Right.

Q. Could that be Woodman instead of Woodside?

A. I said Woodside. I wouldn't answer as to that. I don't know.

Q. You state that the system was bled?

A. Yes.

Q. How is that accomplished?

A. That is accomplished by opening certain valves and pumping oil through the system by hand.

Q. And if there is air, I suppose that it emerges with the oil, is that right? [586]

A. Yes, it emerges as a small bubble.

Q. And did you witness that?

A. I did not witness that. That is in my report. It was in the report to me that there was air in the system. Understand, the system worked perfectly by hand. There was no complaint there at all."

Mr. Howard: I move to strike the last part of the answer, after the first sentence, from line 17 on.

Mr. Hokanson: I agree that is not responsive.

The Court: It may be stricken. Beginning with

(Deposition of James D. Clarke.)

"That is in my report," is that what you mean?

Mr. Howard: Yes, "That is in my report."

The Court: The request it be stricken is granted.

"Q. Did you observe this wire that your report makes reference to?

A. Yes. Mr. Short, I believe, who was the electrician showed me the wire.

Q. And did you observe what Mr. Short did down in the steering engine? A. No.

Q. So you don't know of your own knowledge whether that wire condition was the cause of the hunting? [587]

A. No. As I said in my opinion, that was the cause of it, which under ordinary circumstances the floating break will make a contact and break it (indicating)."

Mr. Hokanson: I move to strike all but the answer "No" as not responsive.

Mr. Howard: It is his own witness. He is examining the witness himself on cross-examination.

Mr. Hokanson: May it please the Court, I am not bound by——

The Court: That request is granted. It is stricken.

(Deposition of James D. Clarke.)

"Q. Now, how long did you test the system after it had been repaired?

A. I should say the test ran up to about three-quarters of an hour time.

Q. What did you do?

A. Operated the system on hand and electrically.

Q. And it then appeared to be in good order?

A. Yes, with the Chief Engineer and the Captain at the controls.

Q. You state that there was some evidence that repairs were attempted to be made by someone aboard the vessel prior [588] to your arrival. What do you base that on?

A. The fact that the Chief Engineer told me he tried to correct the trouble, tried to find it, which is a normal procedure.

Q. Your knowledge of the Urania is then limited to these two items, Clayton boiler and telemotor system? A. That is right.

Mr. Hokanson: I have no further questions.

Re-direct Examination

By Mr. Howard:

Q. And you verified the fact that the ammunition bulkhead had not been removed?

A. That is right.

Q. Now, did the Chief Engineer tell you whether he found the source of the trouble on the telemotor?

A. No. He said he could not find it.

Q. Was there any indication that he had done any work on the telemotor engine?

(Deposition of James D. Clarke.)

A. No indication except the fact of his own statement that he tried to locate the trouble and couldn't.

Q. The statements that are made in your survey, Exhibit SF-2, do those represent your best opinions as to the nature and cause of the trouble?

A. Yes.

Q. After you had bled one of these telemotor systems, is it necessary to replenish the oil?

A. No, the oil is being replenished while you are pumping [589] the oil from the reservoir tank. The oil returns to the tank and is circulated again.

Q. Do you know what valves there are in the telemotor system? A. Certainly.

Q. Where are those located, please?

A. They are located at different places on various telemotors.

Q. On this particular installation, Mr. Clarke, can you state where the valves are located?

A. Not offhand, no.

Q. Did you check the valves to determine whether they opened or closed?

A. No, the men do that.

Q. Did you see the men check the valves?

A. No. However, I will make this statement, if the valves were left open, the machine would refuse to work."

Mr. Howard: I move to strike the last part of the answer as not responsive.

(Deposition of James D. Clarke.)

The Court: It will be stricken, beginning, "However, I will make this statement," etc.

"Q. Now, going back to the Clayton boiler, I believe you stated on cross-examination that the pistons were removed? [590]

A. Yes, they would have to be removed.

Q. State whether or not it would have been necessary to remove the covers from the pumpheads to take the pistons out? A. No.

Q. It would not be?

A. No. The pistons can be taken out through the bottom, as I recall, on that pump.

Q. Were you present when the pistons were taken out?

A. No. I saw the material that was going into the boat. I didn't see the material being put in.

Q. Then you don't know one way or another whether the pistons were taken out through the bottom? A. That is right.

Q. By the way, do you expect to be in the state of Washington around the 6th or 7th of April?

A. No, not when I am busy here, I can't be.

Mr. Howard: That is all."

Mr. Howard: That concludes the deposition of Mr. Clarke.

The Court: It is received in evidence as part of respondent's and cross libelant's case in chief.

At this point we will take the noon recess until two o'clock. Before we separate, be sure to get all of your witnesses lined up so that you can go back to [591] presenting the case in its natural order and avoid future situations making it needful to change the order of taking proof.

(At 12:23 o'clock p.m., Monday, April 11, 1949, proceedings recessed until 2:00 o'clock p.m., Monday, April 11, 1949.)

April 11, 1949, 2:00 o'clock p.m.

Mr. Howard: If the Court please, the respondent and claimant will call no further witnesses in defense to the libel.

The Court: As I understand it, so far as the libel is concerned, the respondent rests?

Mr. Howard: That is correct, Your Honor.

Mr. Hokanson: May it please the Court, libelants at this time would like to call four witnesses in rebuttal of certain testimony brought out by the claimant corporation in its defense to the libel.

The Court: You may do that. [592]

A. H. McDONALD

called as a witness by and on behalf of libelants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. State your name. A. A. H. McDonald.

Q. Where do you live, Mr. McDonald?

A. Seattle

Q. What is your occupation?

A. I belong to the firm of McGinitie & McDonald, marine surveyors.

Q. Would you outline for your background and experience in maritime matters?

A. I don't know just what you want to know about it.

Q. When did you first start working with ships?

A. About 1903.

Q. In what capacity?

A. I worked as a shipyard helper around the shipyard.

Q. What did you do after you finished that employment?

A. I worked in the office, up to estimator; then became manager of the Winslow Ship Yard; and after that, [593] twenty years ago, Mr. McGinitie and I opened up our own business of marine surveying.

Q. When did you become manager of the Winslow yard? A. Around 1922.

(Testimony of A. H. McDonald.)

Q. How long were you there in that capacity?

A. Until about 1929.

Q. Was it thereafter that you formed the firm of McGinitie & McDonald? A. That is right.

Q. Since that time you have acted as marine surveyors? A. That is right.

Q. Have you had any experience in addition to survey work in that period?

A. No, we have been strictly marine surveying.

Q. What did you do during the war years?

A. The last war?

Q. Yes. A. The same.

Q. What have you done during the past two years?

A. We have been in business all the time in the last twenty years.

Mr. Howard: We will concede the qualifications of Mr. McDonald.

Q. Have you had any experience in connection with negotiations of prices of ship repair work?

A. Yes, sir.

Q. What has that experience been?

A. We go out on the various jobs around different parts of the country and take full charge of the ship repair work, negotiate prices and complete the job.

Q. Have you negotiated prices recently, within the past two years, outside the state of Washington?

A. I just came back from the Gulf Saturday, New Orleans. I was down there on a job.

(Testimony of A. H. McDonald.)

Q. For how long a period were you there?

A. About two months.

Q. During the year 1947, were you outside the state of Washington negotiating prices?

A. 1947, I was back in Washington, D. C.

Q. In what capacity?

A. I represented the different steamship companies that had claims against the Maritime Commission.

Q. What did your work there involve?

A. Costs of restoring the ships to their condition they were taken in by the Maritime Commission.

Q. Are you acquainted with the practice of the shipyards in this area with respect to surveyors acting as owners' representatives in connection with the negotiation of prices for work done?

A. That is all we do, is represent the owners.

Q. If you know, what is the practice in this area with respect to the authority of an owners' representative who orders work to be done on the vessel insofar as that owners' representative's right to negotiate the final price of work done?

Mr. Howard: I object to that question, because he has not related it to any particular job. He has asked the witness if he knows what the practice is, and he has not identified it either with the controversy in question as to the tanker Urania or any other particular controversy or any time.

The Court: Is there included in your objection

(Testimony of A. H. McDonald.)

an objection that he has not qualified the witness as to the kind of work that was done in this case?

Mr. Howard: I would add that to my objection, that he has not qualified the witness as to the work that was involved in the tanker Urania, but my previous statement went to the fact that the question asked him to state what he knows without tieing it in to any particular time or any particular job.

The Court: The objection is overruled, with leave, however, to qualify him specifically as to the kind of work done at this particular time.

Q. Assume that in August of 1948 a New York shipowner contracts for the repair, alteration and conversion of a [596] vessel at Winslow, Washington; assume that in company with the owner is an independent marine surveyor designated by the owner as his representative with full authority to order extra work over and above the contract items as the work progresses; assume that the extra work is ordered by the owners' representative and that the work is done under his supervision and direction: under those facts, what is the practice or was the practice in this area at that time, if you know, with respect to the right of the surveyor acting in that capacity to negotiate the final price of the work when completed?

Mr. Howard: I object to that question on the ground that counsel has not included in his hypothetical question any assumption as to what the extent of the authority of the surveyor representing

(Testimony of A. H. McDonald.)

the owner was with respect to the approval of the accounts.

Q. Assume one further fact, to wit, that no delineation was placed upon the authority of the representative by the owner to the shipyard doing the work at the time that the contract was made, or at any time subsequent thereto and before the negotiation of the price?

Mr. Howard: I further object to the question on the basis that it contains an assumption I do not believe is supported by the facts which have been testified to date in this case. [597]

The Court: I did not understand clearly whether you said assuming that the shiprepairer was not notified of any such limitation. Is that what you meant to say?

Mr. Hokanson: That is what I said, Your Honor, I believe, and I believe the evidence is clear on that point.

The Court: If that is what you intended to say, and if you have not done it and wish to attach it, the Court is ready to rule.

Mr. Hokanson: That is what I said, as I recall, and I intended to include it.

The Court: The objection is overruled.

Q. With the assumptions that have been made, are you able to answer the question?

A. All I can say——

The Court: Just say whether you are or are not able to answer.

(Testimony of A. H. McDonald.)

The Witness: I am able to answer the question as far as concerns any work that I have gone out on.

The Court: Do you wish to ask him another question?

Q. What was the practice?

A. That I represented the owner entirely in authorizing the work, approving the invoices, agreeing on the prices and authorizing the invoices. [598]

The Court: You asked for the practice, did you not? You did not ask so much about this man.

Mr. Hokanson: Yes, Your Honor.

Q. In this area at that time, if you know, what was the practice with respect to the right of the representative to negotiate final prices on work done, assuming the facts that I have given you?

Mr. Howard: I would like to enter a further objection to this question at this time on the ground that it is not proper rebuttal, a matter that should have been brought out in the case in chief.

Mr. Hokanson: May I reply, Your Honor?

The Court: You may.

Mr. Hokanson: The testimony of Mr. Williams was to the effect that authority of the surveyor was limited with respect to the negotiation of price. I feel that this is entirely proper rebuttal to establish what the practice was in this area at that time, giving the conditions that the evidence has developed here.

The Court: What evidence? The evidence of

(Testimony of A. H. McDonald.)

libelants in chief, or the evidence of respondent in answer?

Mr. Hokanson: The evidence of respondents in answer with respect to the authority of the owners' representative under the facts testified to at this trial.

The Court: Is it your theory that the scope of libelants' evidence in their case in chief is to this extent, that the representative requested and authorized the additions; and in the course of the respondent's case in chief it was developed that they instructed him concerning limitations upon his authority; the libelants did not go into the question of any limitations upon his authority in their case in chief? Is that the theory upon which you offer this as rebuttal?

I am trying to find out what is the theory on which you claim the right to offer this now in answer to the objections stated by Mr. Howard.

Mr. Hokanson: The evidence of Mr. Williams on this point, Your Honor, appears to be in conflict. My recollection of the testimony is that there is no evidence whatever that any limitation on Mr. Williams' authority was communicated to the libelants.

The Court: I am thinking now of comparing what the libelants did in their case in chief, and whether the subject to which this is offered as rebuttal was introduced for the first time in respondent's case in chief.

Mr. Hokanson: That is the theory of this testimony, Your Honor, that Mr. Williams indicated in

(Testimony of A. H. McDonald.)

his [600] testimony that at least in the practice that he had pursued with Mr. Antippas, his authority in other cases had been limited insofar as the negotiation for final prices was concerned, and we are here confronted with a situation that differs from Mr. Williams' previous transactions with Mr. Antippas on the East Coast.

We have him out here on the West Coast with the owner on the East Coast. Mr. Williams ordering the work and clothed with full authority insofar as libelants' knowledge is concerned, and on those conditions I feel that the testimony of this witness is proper rebuttal to meet Mr. Williams' testimony with respect to what practice he had followed in his relations with Mr. Antippas prior to this deal.

The Court: Again I ask, what is your contention as to whether the libelants did or should have gone into this same question in connection with the libelants' case in chief? If you either did or should have done it then, is not the objection by Mr. Howard tenable? Explain why it should not be well taken, if there is any explanation.

Mr. Hokanson: We had no way of anticipating that that matter would be disputed.

The Court: In the first place, was it or was it not [601] anticipated? Did libelants or did libelants not go into this phase of the matter, and were they not required to?

Mr. Hokanson: My recollection is that we did not, Your Honor. I can be mistaken, but my recollection is that we did not develop this in our case in

(Testimony of A. H. McDonald.)

chief, and it is my position that the matter has been raised, at least inferentially, by Mr. Williams' testimony, which is not altogether clear on this point.

The Court: Was there any obligation on the part of libelants to anticipate this and cover it in the scope of the testimony for libelants in their case in chief?

Mr. Hokanson: There is nothing in the pleadings raised with respect to the matter of the extent of his authority. The pleadings merely deny reasonableness of price, and the record shows Mr. Williams signed as owners' representative. We had no way of anticipating they would attempt to repudiate the extent of that authority, and I feel it was not our proper burden to go into that in chief.

The Court: I will hear from Mr. Howard.

Mr. Howard: If the Court please, I have very hastily checked back in my notes, and the first occasion when Mr. Williams was called to the stand as [602] an adverse witness on behalf of libelant, according to my notes, on direct examination the subject of his authority with respect to the additional work was definitely inquired into; and furthermore, on cross-examination there was still further examination as to the extent of that authority.

The Court: Was anything said about practice among ship repairers and owners with respect to such authority?

Mr. Howard: With respect to practice, it is my recollection that I attempted to inquire from the

(Testimony of A. H. McDonald.)

witness about that at the time he was first called to the stand, and an objection was sustained to that question, so I couldn't interrogate him further on it.

The Court: But you were permitted to do it on the respondent's case in chief?

Mr. Howard: I believe that is correct, Your Honor.

The Court: The objection is overruled. I think the Court ruled as you said was ruled during libelants' case because the Court probably thought that subject was not in the scope of the direct examination.

You may inquire.

Q. Read the question, please.

(Last question read by reporter as follows: "Q. In this area at that time, if you know, what was the practice with respect to the right of the representative to negotiate final prices on work done, assuming the facts that I have given you?")

A. I don't know about this case, but any instances I have gone out on when I was appointed—

Mr. Howard: I object to that as not responsive.

The Court: Your conduct is not called for at all. It is a question of what is the practice at this port or in this vicinity respecting that inquiry. You are not being asked for what you have done.

The Witness: I would say it is the practice in this port that the surveyor, owners' representative, that orders the work approves the prices, negotiates and approves the prices.

Mr. Hokanson: There are certain additional

(Testimony of A. H. McDonald.)

questions which this witness would be competent to testify to, but which would be proper rebuttal of the libelant's case in answer to the cross-libel. With the Court's permission, in order to avoid the necessity of recalling this witness, I would like to ask him some questions at this time. They are very brief.

The Court: Has the opposing side any objection?

Mr. Howard: I hardly see how we can intelligently interrogate this witness at this time on rebuttal to the cross-libel when we are just getting under way with [604] testimony on the cross-libel.

The Court: It seems that way to me. I do not know how you can anticipate what will be brought out on the cross-libel.

Mr. Hokanson: May it please Your Honor, certain of the depositions have already been read into evidence. There has been called into question the competency of the Commercial Ship Repair employees to accomplish certain work. My questions will relate to that matter, for one, and will relate moreover to the question of responsibility with respect to work done on the main engine under terms of this contract, and it would be for that purpose that I would interrogate the witness further.

The Court: So far as competency of the repair yard and its employees is concerned, you should have gone into that in your case in chief before you rested with this and other witnesses. If there is any objection to it, I will hear Mr. Howard further on the point.

(Testimony of A. H. McDonald.)

Mr. Howard: I still maintain that it is hardly proper at this time to present rebuttal evidence on the cross-libel. Although we have had some depositions read, we have a lot more to read, and I think the logical order should be followed here for the purpose [605] of the Court, who has to make the decision.

The Court: I prefer it that way. You do not expect to leave town this week, do you, Mr. McDonald?

The Witness: I have to go to Portland on a job.

The Court: When are you going to leave for Portland?

The Witness: Wednesday. I could put it off and leave Thursday.

The Court: I think it would be better if you would. Do not leave town without communicating with Mr. Hokanson, Mr. McDonald.

The Witness: All right.

Mr. Howard: I would like to ask the witness a few questions.

The Court: You may do that.

Cross-Examination

By Mr. Howard:

Q. You spoke of having been back at Washington, D. C., on owners' claims against the Maritime Commission. That didn't involve repair of vessels, did it?

(Testimony of A. H. McDonald.)

A. Repair bills, yes, we reconditioned the vessels.

Q. Wasn't that a question of reconversion of vessels under requisition charter?

A. Restoring them. We repaired some and some were [606] left outstanding.

Q. It was a question of redelivery under requisition? A. Yes, and repairs.

Q. It wasn't directly involved with any controversy?

A. We had full authority to settle.

Q. It wasn't directly involved with any controversy over repair bills, your trips back to Washington?

A. Yes, some of them were. Repairs were taken into consideration.

Q. It was a question of valuation of a vessel?

A. And the cost of repairs.

Q. In answer to this question that Mr. Hokanson gave you containing certain assumptions, you stated that it was the practice that a surveyor had the authority to negotiate and approve prices?

A. As owners' representative, if he is appointed as owners' representative. As a surveyor or classification society, no.

Q. Forget about a surveyor to the classification society. A surveyor acting as owners' representative, there might be instances when the agreement was such that that practice wouldn't apply?

A. That is the agreement between the owners and

(Testimony of A. H. McDonald.)

the surveyor?

Q. Yes. [607]

A. I know nothing about that.

Q. Isn't it true that you are called out on jobs occasionally to represent the owners when the owners reserve the right to approve prices?

A. I never have. I have gone out unlimited, I have never been limited.

Q. You mean to say that in all these years of experience you have never been instructed to refer the matter of price back to the owners before final O. K. is put on it? A. No, sir.

Mr. Howard: That is all.

Mr. Hokanson: No further questions.

The Court: You will recall the Court's request that you not leave the city without notifying Mr. Hokanson, and I will add, or his client, Mr. Black or Mr. Featherstone.

The Witness: I understand, sir.

(Witness excused.)

The Court: Call libelants' next witness.

Mr. Hokanson: We will recall Mr. Lindgren.

The Court: Court is recessed for five minutes.

(Recess.) [608]

ARTHUR LINDGREN

recalled as a witness by and on behalf of libelants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. Calling your attention to Libelants' Exhibit 4, can you state whether any discussion was had between you and Mr. Williams with reference to item 14, as to the spare set of boiler coils, at the time Mr. Williams signed the document?

A. There was no discussion at the time he signed the document, Mr. Hokanson.

Q. As to spare boiler coils? A. None.

The Court: Was that with reference to the signing of the original contract, is that what you mean?

Mr. Hokanson: No. 4 is the extras.

The Court: Is that the estimate or specifications?

The Witness: That is the final specifications.

The Court: Were those the basis of the original contract or the extras?

The Witness: The extras, sir. [609]

The Court: Who prepared that document, do you recall?

The Witness: I did, in collaboration with Mr. Williams.

The Court: Does that concern that $900 item that Mr. Williams said in his testimony he thought was an inadvertant charge by the libelants?

(Testimony of Arthur Lindgren.)

Mr. Hokanson: Yes, Your Honor.

The Court: I am interested to know what this witness knows about that.

Q. Directing your attention to Libelants' Exhibit 7, when that document was discussed between you and Mr. Williams, was there any discussion with reference to spare boiler coils?

A. Would you repeat that, please?

Q. Read the question, please.

(Last question read by reporter.)

A. None.

Q. Directing your attention to Libelants' Exhibit 6, when that document was signed by Mr. Williams, was there any discussion with reference to the item appearing on the last page thereof relating to a spare set of boiler coils at a price of $900?

A. There was no discussion whatever respecting that at the time the invoice was signed. [610]

Q. When Mr. Williams signed Exhibits 4 and 6, did he examine the items listed on each document?

A. Previous to signing both of these documents, Mr. Williams had ample time to peruse them.

Mr. Howard: I object to that answer as not responsive.

The Court: Sustained.

Q. If you know, did he examine them?

A. He did.

Mr. Hokanson: You may examine.

Recross-Examination

By Mr. Howard:

(Testimony of Arthur Lindgren.)

Q. Did Mr. Williams discuss this item of spare boiler coils with you on any other occasion?

A. Yes.

Q. When?

A. To my recollection, I would say approximately two weeks before the vessel left the yard. Mr. Williams told me, I think in the presence of Mr. Featherstone, that it would be very desirable, in fact, necessary, that the vessel have a spare set of boiler coils aboard. At that time we did not have in our warehouse at Winslow any such article.

However, at my direction our purchasing agent set out to locate spare boiler coils that would fit this [611] particular boiler, and it so happened that we had several sets available in our Bell Street warehouse at Pier 66. Then at Mr. Williams' direction and order, we had a set of those shipped over to Winslow and placed aboard the ship in storage. There was no discussion as to price or otherwise at that time.

Q. That is the only other occasion that you discussed it with Mr. Williams?

A. That is all.

Mr. Howard: I have no further questions.

Mr. Hokanson: No further questions.

The Court: You may be excused.

(Witness excused.)

J. J. FEATHERSTONE

recalled as a witness by and on behalf of libelants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

Q. Do you recall discussing with Mr. Williams at any time the question of a spare set of boiler coils on the heating boiler? [612]

A. Yes.

Q. When?

A. I can't state the exact date, but it was about the time we were stocking the spare parts in the forecastle, and he asked me if——

Mr. Howard: That is the answer to the question, right there.

The Court: That is sufficient. Wait until he asks you another question.

Q. What was your discussion?

A. He thought he should not proceed to sea without a set of spare coils.

The Court: Who was that?

The Witness: Mr. Williams.

Q. Was anything further said at that time?

A. He asked me if I could rustle him a set of coils for spares.

Q. What did you do in response to that request?

A. I checked with our warehouse at Winslow, and they had none of the particular type of coil available, so then I called Seattle, talked to Mr.

(Testimony of J. J. Featherstone.)

Black, and apparently in the meantime Mr. Black did not respond. The next day I called our purchasing agent, went over myself, searched our stock and found a set of coils suitable for that particular installation. [613]

Q. Was there any discussion with Mr. Williams with reference to the price of that item?

A. Yes. I didn't know the price myself of the coils at that time, and I discussed it with Mr. Geis, our purchasing agent in Seattle, and he got a price —I don't know how he got it, but Williams said the next day when I told him what the price was, he wanted to talk to the Clayton boiler man, so after he ascertained the factory price from the Clayton boiler man, we arrived at a price of $900. The factory price was around $1250.

Mr. Howard: I move to strike the last part of the answer as not responsive.

The Court: The factory price?

Mr. Howard: Yes, Your Honor.

The Court: It is stricken and the Court will disregard it.

You say you got this $900 price from your purchasing agent in Seattle?

The Witness: No, sir. The purchasing agent told me they cost between $1200 and $1300, and I told Mr. Williams that the next morning. He told me he wanted to talk to the Clayton boiler man before arriving at any figure or agreement pertaining to the spare set of coils, which he did and proved

(Testimony of J. J. Featherstone.)

to himself they did cost that much. I called Mr. Black and we agreed upon [614] a price of $900, because we had two or three sets on hand, and we thought we could let him have it for that price.

Q. Did you discuss with Mr. Williams the job of rebuilding or building the boiler which is listed as item 14 on Exhibit 4?

A. That is the boiler in its entirety?

Q. Yes. A. Yes, sir.

Q. When was that, if you recall?

A. Right after we started the job.

Q. Did you arrive at any tentative price agreement with Mr. Williams covering that item?

A. Approximately $6000, because we had a long delivery date from the factory getting the boiler out from the East. We couldn't get a boiler locally.

Mr. Howard: I move to strike the last part of the answer.

The Court: It is so ordered. Do not volunteer any discussion if the question does not ask for it.

Q. When you discussed the price of doing that boiler, was there any discussion with respect to the furnishing of a spare set of coils?

A. No, sir.

The Court: It did not register clearly with me what he said about a $6000 item.

Mr. Hokanson: Would you prefer I ask him the question again?

Mr. Howard: I submit, Your Honor, that part

(Testimony of J. J. Featherstone.)

was within the motion I made to have that answer stricken.

The Court: Read the question and answer.

(Last question and answer read by reporter as follows:

"Q. Did you arrive at any tentative price agreement with Mr. Williams covering that item?

A. Approximately $6000, because we had a long delivery date from the factory getting the boiler out from the East. We couldn't get a boiler locally.")

Mr. Howard: I will withdraw my objection, Your Honor. I was mistaken as to that figure. That is the last part of the answer I moved to have stricken.

The Court: Disregard the Court's ruling upon the request to strike part of this answer. It all remains in the record.

Q. How much later in time, if you remember, was it after your original discussion with Mr. Williams concerning the boiler that you discussed with him the matter of furnishing a spare set of coils?

Mr. Howard: I object to that question as leading.

The Court: The objection is overruled. [616]

A. The reason it came up, we were stowing the spare parts—the reason I can recall, it was just previous to the ship's sailing.

Q. About how long before?

A. Not over a week, because we were stowing the stuff in the forecastle.

(Testimony of J. J. Featherstone.)

to himself they did cost that much. I called Mr. Black and we agreed upon [614] a price of $900, because we had two or three sets on hand, and we thought we could let him have it for that price.

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A. No, sir.

The Court: It did not register clearly with me what he said about a $6000 item.

Mr. Hokanson: Would you prefer I ask him the question again?

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(Testimony of J. J. Featherstone.)

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The Court: The objection is overruled. [616]

A. The reason it came up, we were stowing the spare parts—the reason I can recall, it was just previous to the ship's sailing.

Q. About how long before?

A. Not over a week, because we were stowing the stuff in the forecastle.

(Testimony of J. J. Featherstone.)

The Court: Is that when he first talked about the spare coil?

The Witness: Yes, sir.

Q. Directing your attention to Libelants' Exhibit 4 and item 47 listed thereon, do you know whether that item was furnished?

A. Partly.

Q. To what extent was it furnished?

A. The clipboards were removed at the after end of the engineroom on the starboard side. The metal lockers were not built.

The Court: What does this refer to?

Mr. Hokanson: Item 47 of Exhibit 4, Your Honor, which relates to an item which Mr. Williams testified was not furnished.

The Court: What is the item, Mr. Featherstone, if you know?

The Witness: I will read it to you, sir. "Item 47. Remove 2 clipboards at after end of engineroom, [617] starboard side, and build in 2 metal tool lockers with shelves, doors, hasps and locks."

The Court: Are counsel agreed as to what the nature of that item is?

Mr. Howard: I understand it is item 47 of Libelants' Exhibit 4.

Mr. Hokanson: I will read it, Your Honor. "Remove 2 clipboards at after end of engineroom, starboard side, and build in 2 metal tool lockers with shelves, doors, hasps and locks."

(Testimony of J. J. Featherstone.)

Q. May I ask that Mr. Featherstone's answer be read?

(Last answer read by reporter as follows:

"A. The clipboards were removed at the after end of the engineroom on the starboard side. The metal lockers were not built.")

Q. Was that by agreement?

A. Yes. We swapped another item on that.

Mr. Hokanson: No further questions.

The Court: What was the other item you swapped for that?

The Witness: We did several things around the engineroom of minor nature. Among them, that wasn't so minor, we built a tool box under the work bench in the engineroom to suffice for those tool lockers that were supposed to be built on this particular item. [618]

The Court: How much money was involved in that item?

The Witness: We added—it would balance the unfinished work in regard to item 47 that was unfinished.

The Court: How much money?

The Witness: $225.

Recross-Examination

By Mr. Howard:

Q. Do you know what the cost of a complete new Clayton boiler or steam generating plant of equivalent size to the one aboard the tanker Urania would have been in September or October of 1948?

(Testimony of J. J. Featherstone.)

A. No, I really don't, not exactly.

Q. Did you ever check it?

A. No, I never did.

Q. What was the value of the labor that went into the removal of the 2 clipboards under item 47 that you have just testified to?

Mr. Hokanson: May it please Your Honor, the witness has not stated he knows what labor went into that item.

The Court: Do you know?

The Witness: About the labor costs of removing the clipboards? [619]

Mr. Howard: Yes.

The Witness: About $150, flushing off the bulkhead and cleaning it up between the—to clean up the bulkhead and remove all the scales from the fastening required to hold the clipboard, about $150.

Q. Do you arrive at that figure of $150 by reference to any other documents that have been offered as exhibits?

A. No, by agreement with Mr. Williams.

Mr. Howard: No further questions.

Mr. Hokanson: No further questions.

The Court: You may step down.

(Witness excused.)

JOSEPH L. SWEETIN

recalled as a witness by and on behalf of libelants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hokanson:

(Specifications 837 marked Libelants' Exhibit 13 for Identification.)

Q. Handing you what has been marked for identification as Libelants' Exhibit 13, can you state what that is, if [620] you know?

A. Yes, sir.

Q. What is it?

A. It is a set of specifications for the conversion of the ex-Navy tanker Y. O. 73.

Q. When did you first see the document?

A. I first saw this particular document on the occasion of first going aboard the Y. O. 73, the Urania, on or about August 1, 1948, at Foss Tug and Barge Mooring, Lake Washington Ship Canal.

Q. In whose possession was it at that time?

A. This document was in the possession of Mr. Antippas at that time, and at that time was presented to me by him.

Q. Was there any discussion relative to the document at that time?

A. Yes, there was considerable discussion relative to this document. It had a bearing upon the work that was projected to be effected upon the Urania, then the Y. O. 73.

Q. Will you state what discussion was had with

(Testimony of Joseph L. Sweetin.)

reference to this document?

A. In the first instance, accompanied by Mr. Antippas, we had surveyed the vessel and seen the contemplated work, and upon completion of that tour of the vessel had conferred together in the vessel's wheelhouse, at which time this document was brought out as a reference in [621] explaining the work to be done, contemplated to be done.

Q. The document bears certain handwriting on it. On page 1 thereof, can you identify the writing?

A. On this cover page?

Q. Yes.

A. There is handwriting there by me and by Mr. Lindgren of our yard.

Q. Turning the page, state where you find the next writing.

A. On page 1, numbered 1.

Q. Whose handwriting is found there, if you know? A. That is mine.

Q. What does it say?

A. In reference to the dimensions of the vessels, there is a note which says, "not correct." This note says "not correct."

Q. When did you write that?

A. To the best of my recollection, I wrote this on the evening after having visited the vessel.

Q. Is there any further writing on that page?

A. On that page, there is a paragraph here concerning, "The vessel shall be lengthened by the addition of four cargo tanks by the amount of 42

(Testimony of Joseph L. Sweetin.)

feet 6 inches." I have noted alongside of that paragraph the word "out."

Q. When was that done? [622]

A. At the same time. That was in the evening of the day in which I first received these specifications.

Q. Would you turn the page? What page do you now have before you? A. Page 2.

Q. Is there any writing on that page?

A. Yes, sir.

Q. State what it is.

A. In the fourth paragraph, "The vessel shall be dry docked"—there is a line there in red pencil crossing out the word "for the performance of such conversion items as are required," the words "for the performance of such conversion items as are required" having been stricken out.

Q. Is there any further writing on that page?

A. On either side of the next paragraph, beginning with the word, "The conversion shall meet full requirements of the American Bureau," on either side of that paragraph the word "out" appears in pencil. On the lefthand side the word "out" is accompanied by an arrow pointing toward the top of the page. Immediately below that paragraph, there are lines across the sheet setting off the upper part from the lower part. On the righthand side, opposite paragraph A-7, Miscellaneous Items, the word "Start" is written.

Q. Whose handwriting does that appear to be in?

(Testimony of Joseph L. Sweetin.)

A. It appears to be mine.

Mr. Howard: If the Court please, at this time I would like to enter an objection to this line of questioning. I cannot see the materiality of it, nor can I see that it is proper rebuttal.

The Court: What does it rebut, or tend to rebut?

Mr. Hokanson: May it please the Court, the Court has indicated its desire to have evidence, both documentary and verbal, relating to this entire transaction.

The Court: I would like to correct counsel in your reference to the Court's desire. The Court does not desire a thing in the world about this lawsuit. I have no desires about it. I have indicated issues and proof of issues that might be interesting to the Court, that might assist the Court in determining these issues that are presented by the pleadings. That is all.

Mr. Hokanson: My apologies, Your Honor, for having misstated your previous remarks. May I state it another way? The claimant in this case introduced either yesterday or the day before a document over my objection which purported to be the Sparkman & Stevens specifications.

Mr. Antippas had previously testified that he had furnished copies to at least three different ship repair companies which bore his remarks or comments in connection with what he desired insofar as the conversion of the vessel was concerned. I propose to introduce this document on the ground

(Testimony of Joseph L. Sweetin.)

that it is the copy of the document which Mr. Antippas furnished to the libelants, and upon which the specifications were subsequently drawn upon which the work was done and the bid based, and for that reason, Your Honor, I feel that it is entirely proper to introduce it at this time to show the Court that the document heretofore entered is not the one which has the best evidentiary value in this case.

The Court: Does it tend to rebut something that Mr. Antippas as a witness said?

Mr. Hokanson: That is difficult for me to anticipate. This set of specifications is very broad, Your Honor.

The Court: You know what Mr. Antippas' testimony was, do you not? You are charged with knowledge of it. Does it or does it not tend to rebut something he said or something some other witness said?

Mr. Hokanson: It rebuts the inference that the specifications which were introduced yesterday are the true specifications upon which Commercial Ship Repair drew up another set of specifications. [625]

The Court: Who introduced the set yesterday?

Mr. Hokanson: Mr. Howard, Your Honor, and I believe Mr. Howard would agree that he has previously examined this set in my office, and yet did not call upon me to produce it at this time, and I feel that for the Court's information this set of specifications should be before the Court in this proceeding.

(Testimony of Joseph L. Sweetin.)

Mr. Howard: If the Court please, I have no objection to this if these are the specifications that were handed to Commercial Ship Repair by Mr. Antippas which he indicated to Mr. Sweetin in the wheelhouse discussions were to be used as reference for the work to be done.

I have no objection to those being admitted on the request of libelants. They had an opportunity to offer them when they put on their case in chief, and they didn't, but I will waive any objection to their introduction now.

I do not see the materiality of the examination that is going on now of this witness as to what notations are on it.

The Court: What is the purpose of that?

Mr. Hokanson: To identify the document properly and to establish how this document was discussed at the time between Mr. Sweetin, who has already testified [626] that he drew subsequent specifications which are introduced as Libelants' Exhibit 1.

The Court: Between Mr. Sweetin and whom?

Mr. Hokanson: Mr. Sweetin and Mr. Antippas.

The Court: The objection is overruled. You may continue.

Q. You are referring now to page 2?

A. Yes.

The Court: Make it as brief as possible in view of counsel's statement that he has no objection to the document.

(Testimony of Joseph L. Sweetin.)

Q. Were the writings in the righthand margin made in the presence of Mr. Antippas?

A. Yes, some of them.

Q. On page 2?

A. Some of them. The righthand ones were made in the presence of Mr. Antippas.

Q. Which ones?

A. The words "start" and "out".

Q. On page 2? Did you discuss with him at that time the remainder of the specifications which you now have before you?

A. Yes, we discussed these specifications generally.

Q. If you know, does Mr. Antippas' handwriting appear at any place on the document? [627]

A. There is handwriting here that I don't believe to be mine, and I do believe was put on this document by Mr. Antippas at the time we discussed it. I think both of our handwriting appears on this document. I can't be sure of that.

Q. Subsequent to page 2, all the entries thereafter, if you know, when were they made?

A. They were all made at the same time.

Mr. Hokanson: I now offer the exhibit in evidence.

Mr. Howard: No objection.

The Court: It is admitted.

(Libelants' Exhibit 13 received in evidence).

Mr. Hokanson: No further questions.

Mr. Howard: No questions.

(Testimony of Joseph L. Sweetin.)

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Hokanson: Libelants rest, Your Honor.

Mr. Howard: If the Court please, I would like to put on one witness in surrebuttal.

The Court: On what point?

Mr. Howard: On points that have been raised in rebuttal regarding the Clayton boiler and the Sparkman & Stevens specifications. [628]

The Court: Did you go into it on chief? I understand the theory is that you brought it out first in respondent's case in chief, and now it is permissible to have rebuttal on such matters only as were not gone into or should not have been gone into on libelants' case in chief, and now surrebuttal—I do not quite understand why you have that right. Is there some detail about it?

Mr. Howard: I understood I would have that right, if the Court please, under applicable rules, where certain matters were brought out on rebuttal that we have not previously had a chance to meet.

The Court: What matters?

Mr. Howard: I am speaking about the Clayton boiler as testified to by Mr. Featherstone on rebuttal, and the Sparkman & Stevens specifications and the notations on those specifications that were brought out on this new exhibit that is now admitted.

The Court: That part of it would seem to me to be appropriate, but as to the boiler, it seems to me

you went into the boiler quite extensively on your case in chief.

Mr. Howard: Yes, Your Honor. I only wish to answer that part of the rebuttal by libelants in Mr. Featherstone's testimony when he brought out the information as to a discussion with Mr. Williams as to the amount.

Mr. Hokanson: May I reply, Your Honor?

The Court: You may.

Mr. Hokanson: With respect to the last exhibit, I think Mr. Howard will agree with me that he and Mr. Antippas examined the document in my presence in my office pursuant to a motion for production of documents and yet they chose to introduce another set bearing no notations. I don't see that it is proper surrebuttal at this time to go into that document any further. They had the opportunity to present the true copy, which has some reference to this case, and chose not to do so for reasons unknown to myself.

The Court: I do not believe that affects the right of surrebuttal. As to this document, Exhibit 13, you may proceed with surrebuttal as requested. I am not sure about the other points. I will have to determine that as they are brought out.

Mr. Hokanson: With respect to the boiler, I don't see that there can be any new material developed on rebuttal. Mr. Williams testified as to his impression of that item, and we have merely presented testimony tending to contradict his im-

pression. I think that is the end of it, Your Honor.

The Court: I will see further about that when the time comes. I am inclined to think that if for the first time in rebuttal it was said that a certain statement was made by a certain person, that that person has a right to explain his side of that story.

You may proceed.

DEMETRI ANTIPPAS

recalled as a witness by and on behalf of respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Howard:

Q. Did you hear the testimony of Mr. Featherstone as to his conversation with Mr. Williams as to the approximate cost of the repairs to the Clayton boiler? A. I did.

Q. Was that cost reported to you?

A. No, it was not.

Q. Did you at any time inquire or ascertain the cost of obtaining a new boiler, complete, equivalent to that boiler installed in the tanker Urania? [631]

Mr. Hokanson: I object to that as not proper surrebuttal within the scope of the issue here.

The Court: I do not believe it is material, whether it was reported to him or not, under the issues of this case.

Mr. Howard: That question was not objected to,

(Testimony of Demetri Antippas.)

Your Honor. I think the question counsel is objecting to is the question as to an inquiry to ascertain the cost of a replacement boiler, new, complete.

The Court: What is your theory on your position?

Mr. Howard: That for the first time on rebuttal it comes out through the testimony of Mr. Featherstone that he claims to have had a conversation with the owners' representative, Mr. Williams, that the approximate cost of the job would be $6000, and that he discussed it with Mr. Williams before the job was well under way, I think he said he discussed it after the job had started.

I propose to bring out by this witness what relation that amount would have as now testified to for the first time as to the cost of a new boiler, complete.

Mr. Hokanson: Mr. Williams himself testified, as I recall, to a discussion with respect to an agreement as to the price of that boiler, in advance. Now Mr. Howard on cross-examination of Mr. Featherstone [632] asked him whether he had ever inquired into the cost of a new boiler. Mr. Featherstone replied that he never had and that he didn't know.

Now how a question directed to Mr. Antippas at this time as to whether he inquired has any bearing upon the case I don't understand, Your Honor, and I think it is way beyond the scope of surrebuttal testimony.

The Court: It seems to me it is a good example of seesawing. I do not feel clear in my mind about it.

(Testimony of Demetri Antippas.)

I will hear Mr. Howard's statement responsive to the last remarks of Mr. Hokanson.

Mr. Howard: My reason for making this inquiry of this witness on surrebuttal is that for the first time on rebuttal Mr. Featherstone testified as to a conversation with Mr. Williams as to the approximate cost of the job. I claim the right by this witness on surrebuttal to bring out the fact that the amount reported to the owners' representative, according to the witness Featherstone, is out of line with what the cost of a new boiler is.

The Court: I think the Court will rule in favor of the question, on the theory that it is probably better for the trial Court to permit too many questions than not enough questions. You may answer. That is [633] about the only principle I see in favor of it.

The Witness: Yes, I inquired into the cost of a new boiler, complete.

Q. From what source did you inquire?

A. I found out from the Clayton boiler manufacturers in California.

Q. What price was quoted to you for a new boiler equivalent to that installed in the tanker Urania?

Mr. Hokanson: I object to that as involving a hearsay answer; whatever price was quoted to him would be offered for the proof of the truth of the matter asserted by the person inquired of. That person is not here subject to examination, and I

(Testimony of Demetri Antippas.)

therefore think the question is irrelevant, immaterial and incompetent here as involving a hearsay response.

Mr. Howard: I submit, Your Honor, that a quotation of price in the ordinary course of business would certainly not be considered as a hearsay statement.

The Court: Do you claim that he acted upon the quotation?

Mr. Howard: No, Your Honor.

The Court: If you prove a course of conduct by this witness which is material to this action, I think under some circumstances he might be permitted to give a quotation. A study of cost items may involve [634] quotations of integral parts. It does not seem to me that so far you have laid the foundation for that principle.

The objection is sustained. You can see what he did after he obtained a quotation, if you wish.

Q. Referring to Libelants' Exhibit 13, do you have that before you? A. Yes, I do.

Q. Will you state whether there are any notations in your handwriting on that document?

A. Yes, there are quite a few.

Q. Tell us what pages they are on, very quickly. How many pages?

A. I will go over these pages and tell you. On page 3, on page 6, 6-A, 7, 10, 11—there is two notations by me and there is one which must have been made subsequently. It is right next to an item

(Testimony of Demetri Antippas.)

which we had crossed out. Then on page 12, 13, 14, 15, 16, 17, 18.

Q. All those pages have notes in your handwriting? A. In my handwriting only, sir.

Q. Will you please refer to pages 1 and 2? Are there any notes in your handwriting on those?

A. No. 1 hasn't any notes in my handwriting, and the "not correct," that refers to the dimensions given in this document, which are the dimensions of the lengthened vessel [635] after the lengthening.

Q. Do you recognize the other notations on that document as to who made them, on pages 1 and 2?

A. I have never seen these notations before. When I made the notation, which I made, just the ones in my handwriting written in black pencil, there were no other notations made at that time in front of me.

Recross-Examination

By Mr. Hokanson:

Q. You were in my office about a week ago, were you not? A. I was.

Q. You examined that document, didn't you?

A. I did.

Q. You stated in my presence, did you not, that that was the document you had gone over with representatives of Commercial Ship Repair with respect to new specifications?

A. I did. After seeing my handwriting on it, I did.

Q. You have heard Mr. Sweetin's testimony?

(Testimony of Demetri Antippas.)

A. I have.

Q. Do you deny that what he has said is true with respect to going over that document?

A. There is some handwriting on it which might be Mr. Sweetin's, but it wasn't put on at the time when we went [636] over it. I held the pencil and I had this in front of me and I was writing on it.

Q. You went over this document with Mr. Sweetin?

A. That is correct. I pointed out items I wanted left in and the ones I wanted deleted.

Mr. Hokanson: No further questions.

Mr. Howard: That is all.

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Howard: I would like to proceed now, if the Court please, with the cross libel.

The Court: Is there anything that concerns further surrebuttal? Do the respondents rest so far as the libel is concerned?

Mr. Howard: Yes, Your Honor.

The Court: Do the libelants likewise rest now with respect to the libel?

Mr. Hokanson: They do, Your Honor.

The Court: You may proceed.

Mr. Howard: I would like to now read the deposition on behalf of the cross libel of Mr. Arleigh O. Biehler.

The Court: Court is recessed for five minutes.

(Recess.) [637]

Mr. Howard: Mr. Biehler's deposition begins on page 39 of the large volume of depositions.

DEPOSITION OF MR. BIEHLER

"Direct Examination

By Mr. Howard:

Q. Will you state your full name and residence address, please?

A. I live, why, I think it is 1122½ Maple Street, South Pasadena, California.

Q. By whom are you employed?

A. By the Clayton Manufacturing Company.

Q. And they are located where?

A. 1363 Ellis Lane, El Monte, California.

Q. Mr. Biehler, do you expect to be in Seattle or in the State of Washington on or about April 6, 1949, for any reason whatever? A. No, sir.

Q. Your statements and your testimony to be given in this deposition are being taken down by the court reporter in shorthand and later his shorthand notes will be transcribed by him into typewritten form, and we intend to offer that testimony at the time of the trial of this case.

Now, are you willing to waive the reading and signing of your deposition after it has been transcribed?

(Deposition of Mr. Biehler.)

(Discussion by counsel off the record.) [638]

A. Well, I don't see any reason why that should not be all right. All I have to say is not very much.

Q. Then you are willing to waive the reading and signing of your deposition after it has been taken?

A. Yes, that is right.

Q. In what capacity are you employed by the Clayton Manufacturing Company?

(Discussion off the record.)

Q. The question was, in what capacity are you employed by the Clayton Manufacturing Company?

A. I am one of the service men.

Q. And as such what do your duties involve?

A. Mostly repairing steam generators and steam cleaners.

Q. Well, does that refer principally to generators and cleaners manufactured by the Clayton Manufacturing Company?

A. By the Clayton Manufacturing Company, only, yes, sir.

Q. In November of 1948 were you called upon to make some repairs on a steam generator for the tanker Urania? A. Yes.

Q. And where was the vessel located at that time?

A. The vessel was located in the Craig Shipyards.

(Deposition of Mr. Biehler.)

Q. Did you go aboard the vessel?

A. Yes, I did. [639]

Q. And as a service engineer, did you make some repairs on the steam generator at that time?

A. No; at that time I removed the pump from the unit and took it into the plant and repaired it at the plant, and then I took it back and installed it and made the necessary adjustments.

Q. That was while the vessel was still at Long Beach? A. That is right.

Q. State briefly, if you will, please, and describe to us the nature of this unit that you have referred to that was installed for the Tanker Urania.

A. Well, it was a steam generator, if that is what you want—a device for making steam.

Q. Well, what did it consist of? What were the essential parts?

A. It consisted of a water pump and a coil, which was heated by an oil fire, and the water goes through the coil.

Q. Can you describe this particular pump by the manufacturer's model number or by other identifications?

A. No, I can't. The generator, I believe, was what we called at that time a B02-2500, but that pertained to the whole thing.

Q. That includes the coil and the pump?

A. They are all one unit, the whole machine.

Q. And is that unit rated as to horsepower?

A. It raises 2500 pounds of steam and—I believe

(Deposition of Mr. Biehler.)

that is what the "2500" is for.

Q. Do you recall the date upon which you went aboard the Tanker Urania on the first occasion?

A. I don't recall it.

Q. Have you brought with you some records or memorandum?

A. No, no memorandum. Just the service order that I wrote out at the time, and all I know about the date is that the date it was ordered was 11/10/48, and I see the completed date was 11/16/48. I do this work all of the time and my memory isn't too good, so I brought this along.

Mr. Howard: May we have these documents marked for identification as next in order, Mr. Reporter?"

Mr. Howard: I will ask this be marked for identification at this time.

(Invoice marked Respondent's Exhibit A-15 for Identification.)

"Q. Handing you what has been marked by the reporter for identification as Exhibits W-1 and W-2, will you state what those documents are, please, if you can? [641]

A. W-1—I have never seen that before. It was put out in the office and is just a list of parts used and the price.

(Deposition of Mr. Biehler.)

Q. Can you state whether the parts listed thereon are what you used or were used, to your knowledge, in the repair of the steam unit that we have been referring to?

A. I didn't actually see the parts put in, but from what I have been told, all of these parts would have been used in a complete repair of the pump."

Mr. Hokanson: I object to the answer on the ground that it involves what someone else told the witness.

Mr. Howard: I concede the last part of the answer is objectionable, Your Honor.

The Court: The objection is sustained.

Mr. Howard: Beginning, "but from what I have been told," to the end of the answer, from line 6 through line 7, page 43.

The Court: Do you agree that is the place?

Mr. Hokanson: Yes, Your Honor.

The Court: Let the record show that.

"Q. Referring now to the document W-2"——

Mr. Howard: If the Court please, that is page 2 of Identification A-15.

——"can you tell us what that is?

A. That is the customer's copy of the service order that I made out at the time I finished the job.

Q. That was prepared by you? A. Yes.

(Deposition of Mr. Biehler.)

Q. And you have your own copy of that document with you; is that right?

A. I have my own copy of that with me, yes.

Q. And does your signature appear at the bottom of the document W-2?

A. That is right, it does.

Q. State what you found the condition of the boiler and generator to be, and the scope of the damage upon your first inspection above the Tanker Urania.

Mr. Hokanson: What about the time?

Mr. Howard: Well, he has already said he was aboard the tanker on the 10th of November.

The Witness: I was waiting on the dock when the ship came in and immediately went aboard the ship and looked at the boiler. I don't know whether you would understand what I am going to say or not, but this power pump on this boiler consists of six pumping heads; four pumping heads feed the coil with feed water and two of the heads recirculate water from the accumulator to the coil. The two recirculating pump heads are on a separate part of the crankshaft—or pump—a certain part of the pump—and this part of the pump was dismantled when I went aboard the ship. The rest of the pump was together, but it wasn't in operation condition because the circulating part had been dismantled.

Q. Can you go on, please, and tell us what you found?

A. That is about all I can say, because most of

(Deposition of Mr. Biehler.)

the men on board couldn't speak English and I couldn't speak Greek, so I couldn't question them to any extent as to what had happened, other than I did—It seems like they told me there was water or oil leaking—something like that, at some point.

Mr. Hokanson: I shall object to the answer on the ground that he relates a statement made to him by a party in interest, which material is self-serving.

(Discussion by counsel off the record.)"

Mr. Hokanson: My objection is made, Your Honor, on the ground that he is testifying as to what someone else told him with respect to water or oil leaking.

The Court: Do you still insist on the objection?

Mr. Hokanson: I will waive the objection.

The Court: He is entitled to act upon the [644] hearsay they told him, although he may not be, over objection, permitted to relate the details.

"Q. (By Mr. Howard): Well, then, did you actually discover any defect or the cause of any difficulty or deficiency in the pump while it was still aboard the vessel before you removed it?

A. No, I was unable to tell just from looking at the pump just what the trouble was. To find something like that, it has to be taken apart to find the trouble.

Q. How much of the pump did you find it neces-

(Deposition of Mr. Biehler.)

sary to take from the vessel?

A. The complete pump.

Q. And what did you find upon the investigation of the pump upon its arrival at the shop?

A. We found that at some time or other the pump heads had been changed from the position they were in when it originally left the factory—the ones that remained on the pump—and as those heads were line seamed opposite each other there, the changing of the pump heads to different positions caused the misalignment.

Q. Did you find any broken parts?

A. That I can't tell. I don't know whether there were any broken parts or not. [645]

Q. Were you present when the pump was disassembled at your factory?

A. No, I was not. I go out and do this service work, and something like that would take too much of my time, and so I leave it to the men at the factory, and they do that work all of the time."

Mr. Hokanson: At this point I object to the witness' answer respecting what was found concerning the condition of the pump in the factory, since the witness has——

The Court: Where is it?

Mr. Hokanson: Starting at Line 10 on page 45, the answer beginning, "We found that at some time or other the pump heads——".

The Court: If he participated in the finding, he can say that, can he not?

(Deposition of Mr. Biehler.)

Mr. Hokanson: On Line 21, he states that he was not present when the pump was disassembled at the factory.

Mr. Howard: I submit it is entirely likely that this witness observed those points that are mentioned in the answer beginning at Line 10, Page 45, at the time he removed the pump from the vessel before the [646] time it was disassembled at the factory for later observation. I concede he did not witness it himself, but he may have found the conditions at Line 10, Page 45, at the time he removed it from the vessel.

The Court: I do not feel it is appropriate to strike lines 10-15 inclusive. So far as that is concerned, the objection is overruled. How much further down did you object?

Mr. Hokanson: My objection related back to the testimony beginning at line 10. In view of the Court's ruling I have no objection to his answer beginning at line 21.

The Court: The objection is overruled.

"Q. Did you see the pump after it was disassembled?

A. No, I didn't see it until it was all completely reassembled and I took it back down to the harbor.

Q. Referring you now, Mr. Biehler, to Exhibit W-2 (indicating document)——

A. Yes?

(Deposition of Mr. Biehler.)

Q. ——you have stated on there that the pump was recently repaired and the parts assembled incorrectly, resulting in misalignment and crankshaft damage. A. That is right. [647]

Q. Will you state what the source of that information was?

A. I had better put it that someone——

Mr. Hokanson: Before you answer the question, I want to object to the question in its form, on the ground that the witness has stated that he did not see the pump during the process of its repair—did not see it until it was reassembled.

Mr. Howard: That is precisely why I am asking him for his source of information.

Mr. Hokanson: Well, you can see that if he has no true knowledge of the matters stated in Exhibit W-2 that he is not competent to testify as to what someone else said."

Mr. Hokanson: I will waive my objection at that point.

Q. (By Mr. Howard): Now, Mr. Biehler, you may go ahead and answer my question.

A. Well, I will say that someone on board the boat told me that the generator had been recently overhauled, and, as I say, I took the pump unit back to our factory, and they worked it over and told me what they had found, [648] and I put it in my report."

The Court: That is appropriate for him, be-

(Deposition of Mr. Biehler.)

cause it was done in the ordinary course of business conduct, to put it in his report, to rely upon those facts put in his report?

Mr. Hokanson: I would object on the ground that it was hearsay. I don't think it has been established yet by the testimony that this would be the type of thing which would fall under business records.

The Court: I am not so sure about what they on board the ship told him as to what took place in Seattle or somewhere, but what was done at his factory by his fellow employees or assisting employees, I think that he has a right to put that in his report if in the ordinary course of business he relied upon it.

Mr. Hokanson: For the record, Your Honor, I will make an objection to what is contained in his report based upon what was told him by factory workers, and will move to strike the first part of his answer, beginning on line 24, page 46, where he states what someone on board the ship told him.

The Court: That part of it, what was said on board the ship, should go out, in my opinion, but not [649] what these assisting employees discovered when they opened up the assembly.

Mr. Howard: As I understand it, lines 24 and 25 of the answer on page 46 are stricken?

The Court: Yes.

A. (Cont'd) "I make out these reports every day, and I work on two or three jobs a day, and

(Deposition of Mr. Biehler.)

this was just another report. There wasn't anything special or nothing else. That is the way we work on these things. If someone else runs into things, then they tell me what the trouble is, and I put it on my report.

Q. And by someone else who had to do with the unit, you are referring now to other employees of the Clayton Manufacturing Company that did the work; is that right?

A. Yes, to other employees of the Clayton Manufacturing Company—but the fact that the pump had been recently repaired, part of it, that I was told on the boat."

Mr. Hokanson: I move to strike that for the same reason.

The Court: That will be stricken. "But the fact that the pump had been recently repaired, part of it, [650] that I was told on the boat." That will be stricken.

A. (Cont'g): "The rest of it—that parts were assembled incorrectly, resulting in misalignment and crankshaft damage—that I learned when my own factory actually reworked the pump. I was told quite a bit of the story about what happened up north, and from that I put it down as because it had been assembled incorrectly."

The Court: That statement will be stricken, "I

(Deposition of Mr. Biehler.)

was told quite a bit of the story about what happened up north."

"Q. (By Mr. Howard): Now, after the pump had been repaired at your shops, did you then return it to the vessel? A. Yes.

Q. And did you install it aboard the vessel yourself? A. I did.

Q. And how did it operate then? Did it operate satisfactorily?

A. It operated satisfactorily after I installed it, yes. I wouldn't have left it if it hadn't. I checked with [651] Mr. Antippas and he was satisfied with the operation, and that is when I had him sign the bill, and then I left."

Mr. Hokanson: I move to strike the entire answer on the ground that the question relates to the operation of the pump subsequent to the time it was removed, and the witness previously testified he had no knowledge at the time of its removal as to whether it was in operating condition or not.

Mr. Howard: As to that, I submit that it is entirely proper to show——

The Court: This is subsequent. The objection is overruled as to anything that took place after reinstallation following the overhaul at the Clayton manufacturing plant. It all refers to that, does it not?

Mr. Howard: Yes, your Honor.

The Court: The objection is overruled. I am

(Deposition of Mr. Biehler.)

not passing an opinion on "I wouldn't have left it if it hadn't."

Mr. Hokanson: I move to strike that. No, I will leave it in, your Honor. I withdraw the objection.

"Q. Did you make any adjustments on the controls of the [652] generator or the pump when you were installing it?

A. Oh, yes; that has to be done each time you do any major overhauling work.

Q. Now, Exhibit W-2 lists certain parts used. Did you make that entry (indicating document)?

A. No, I did not. That was made up when they assembled the pump.

Q. You did not make the entries shown on Exhibit W-2?

A. Oh, now, on this one—you mean this one (indicating document handed him by counsel)?

Q. Yes.

A. Why, these figures have been marked over since I wrote them up.

Q. What amount did you show on your records—your copy of this document, W-2?

A. $685.72.

Q. Is that the total?

A. Yes, that is the total, $685.72.

Q. Referring to the items or parts used per list—do you have that?

A. As per attached sheets—$395.40.

Q. And in making that last answer, you were referring to your own office copy or record copy

(Deposition of Mr. Biehler.)

of Exhibit W-2? A. That is right.

Q. Now, will you refer to W-2 and state whether or [653] not the same figures appear on that document?

A. I see that they have been written in or were written on the top of the original figures—they are not the same as they are on mine. If you would like to see it here (indicating document)—here is the same figure as I have here, but they didn't write them down here (witness compares documents). It is the same total, however.

Q. The same total is shown on both?

A. Yes.

Q. Have there been some corrections made on your own copy of that service order which is now represented by our Exhibit W-2 as to the parts used?

A. Well, I don't know when any of that was made. That was—that is, I had nothing to do with that.

Q. Does it appear that some erasures have been made there as to parts used?

A. Well—all I can say is that it is different from that one—when and where that happened, I don't know.

Q. The total shown on your copy and on Exhibit W-2 is what, again, please? A. $685.72.

Q. Well, does that correspond with the corrected totals shown on Exhibit W-2?

A. Yes, it does—it corresponds with the cor-

(Deposition of Mr. Biehler.)

rected totals that appear on Exhibit W-2. [654]

Q. How long have you been employed by the Clayton Manufacturing Company?

A. About four and a half years.

Q. And during that period has your work been all on steam generator matters?

A. As service engineer about two years.

Q. And what training or experience have you had in this type of work prior to that time?

A. I was there about two and a half years in the experimental laboratory of the plant.

Q. Of the same company?

A. Of the same company, yes.

Q. From your experience and from your own personal inspection of the steam generator unit, including the pump, aboard the Tanker Urania, can you state for us your opinion as to the nature or cause of the breakdown or failure of this unit?"

Mr. Hokanson: I object to the question on the ground that it involves the opinion of the witness, who did not personally repair the pump, and whose observation would be based upon statements given to him by persons in the employ of the company.

The Court: The answer takes care of it. He does not answer the question to the prejudice of the party [655] objecting. He ndicates his answer is on the document, does he not?

"A. I can only state what is on here (witness indicates document), the findings that they made

(Deposition of Mr. Biehler.)

at the plant; other than that, I would be just trying to remember something that has gone by quite a while.

Q. Do you know what it cost the customer for all of this unit of the type and size that was installed aboard the Tanker Urania?

A. No, I don't have any idea what the initial cost would be.

Mr. Howard: I have no further questions.

Cross-Examination

By Mr. Hokanson:

Q. Mr. Biehler, you didn't exactly observe the work that was done on the pump at the plant?

A. No.

Q. You merely removed it from the ship and took it to the plant for such work as was required, and when it was completed you reinstalled it on the vessel? A. That is right.

Q. And anything that you have stated on Exhibit W-2 by way of comment upon what was wrong is a statement that somebody gave you—someone working at the plant; is that [656] correct?

A. Not in its entirety, no. As to the items' cost, yes.

Q. That was rendered to you by someone else?

A. Yes. And the action taken in removing the pump, with that work of disassembling or reassembling and replacing necessary damaged parts—those items were done with someone else. Readjusting thermal controls and checking low water cutoff—

(Deposition of Mr. Biehler.)

time 30 seconds—that was done by me on board ship at the time I put it together again.

Q. And what about the item of recommendations?

A. That was my own doing—the recommendations were.

Q. Why did you make that out?

A. Merely to impress upon the operator of the boiler certain things that they should check by the manual.

Q. Did they have in their possession a manual put out by your company, to your knowledge?

A. I believe they did; I am not sure, though.

Q. You did not furnish them one yourself?

A. No, we didn't give them the manual, as I recall.

Q. I take it from your comments and your recommendations, Mr. Biehler, that great care should be exercised in following the instructions for the operation of this particular pump.

A. Well, it is of such a nature that it can't be thrown together by someone that doesn't know anything about it—[657] the same as any other piece of machinery, it has to be put together in a certain sequence.

Q. Apart from the assembling of the unit, which was only examined at your plant, you have reference in your recommendations here to operation, maintenance, and repair procedures, and then you state: "Procedures as outlined in manual should be followed closely."

(Deposition of Mr. Biehler.)

A. That is right.

Q. My question, then, is, Is the pump of a character that requires careful maintenance in accordance with the recommendations in your manual?

A. Well, there are certain parts of the pump—the check valves—to be safe they require maintaining about once every two weeks, to keep them clean; and the oil has to be maintained at a certain level in the pump. Outside of that, there is very little that needs to be mentioned particularly, unless a breakdown occurs; but we have found that lots of people, instead of looking up in the manual to find out exactly what they are doing, they will go ahead on their own and maybe they will try to work something over, whereas, if they would follow the manual as they are instructed there, then they would know exactly what they are doing, and would do it correctly, and that was the reason for the recommendation which I made there—not for any specific cause." [658]

Mr. Howard: I move to strike the last of the answer as not responsive to the question.

Mr. Hokanson: It is cross-examination, and I asked him——

The Court: The first two lines are not responsive, but if there is no objection to them——

Mr. Howard: I will extend my objection to the entire answer.

Mr. Hokanson: I am asking him why the pump

(Deposition of Mr. Biehler.)

requires careful maintenance in accordance with the manual.

The Court: He does not make answer to that; he goes off on a long explanation. The Court is inclined to grant it.

Mr. Hokanson: The entire answer, your Honor?

The Court: Yes. The motion to strike is granted.

"Q. And the instructions in the manual are written out, I presume?

A. That is right. They are very thorough.

Q. Now, when you first inspected the pump and boiler on board the ship, was there any way of determining or did you determine how recently it had been operated?

A. No, there was no way of determining that at all.

Q. And you have stated that the pump was dismantled [659] when you went aboard the ship.

A. Partly dismantled, yes.

Q. And would you state again, please, what parts had been dismantled?

A. The circulating pump, crank shaft, yoke, head flange, and diaphragms, and the pump columns were off the pump, and the motor which ran the recirculating pump was off."

Mr. Hokanson: It is my understanding that we are numbering the exhibits in the sequence that they have been established here.

(Deposition of Mr. Biehler.)

The Court: Will that conform to the present necessities?

Mr. Howard: This is being offered as a libelants' exhibit. It would come as Libelants' Exhibit 14, according to my records.

Mr. Hokanson: We haven't changed the order on the libel and the cross libel, have we? They are just in sequence?

The Court: That is right.

Mr. Hokanson: Then this would be Libelants' 14.

(Sketch marked Libelants' Exhibit 14 for identification.)

"Q. I wonder if you will please give us a rough sketch [660] of the pump (counsel furnishes witness with pencil and blank sheet of legal size paper).

A. Well, I will give you here just a rough sketch of it.

(Witness draws on the sheet of paper referred to—making certain diagrams, indications and letterings.)

A. (Continuing): Now, this is a very rough sketch.

Mr. Howard: Counsel, can we have him identify those parts?

Mr. Hokanson: Yes, as soon as he has finished his drawing, I will have him identify those parts.

The Witness: Now, that would be the effect of looking down on the pump from the top—right straight down (indicating on diagram).

(Deposition of Mr. Biehler.)

Q. Now, would you please indicate with arrows the various parts of the pump, and describe them by writing in on the sketch the names of the parts which are visible as you have drawn them there?

A. Well, it was—This crankshaft—I will draw it also for these two heads here, and draw a broken line here, and then there was a second crankshaft for these two heads like that (indicating on diagram).

(Discussion by counsel off the record.)

Q. Mr. Biehler, you have drawn for us what you say represents a rough sketch of a pump looking down on it from above. [661]

A. Yes.

Q. And you have identified certain parts by drawing arrows pointing to the parts, and identifying them.

A. Yes; a very incomplete sketch, too, I might add, because I haven't shown the cross members in here that actuate the diaphragms in the pump.

Q. I understand that. We will identify this as Libelants' and Cross-respondents' Exhibit Los Angeles A for identification. A. Yes.

(The exhibit was so designated and marked by the reporter.)

Q. Could you now state, Mr. Biehler, referring to this diagram exhibit, what parts shown thereon were dismantled when you went aboard the Tanker Urania for the first time?

A. I am sure that the recirculating pump

(Deposition of Mr. Biehler.)

flanges and the recirculating pump motor—that is, this and this (indicating on diagram)—were off.

Q. Yes.

A. This had been taken loose from the case. There was a flange that fastens to the case, and they both were off—had been taken off. Other than that, there may have been some other parts out, but I can't recall now just what it was.

Q. Do you know who removed these parts?

A. No, I do not. [662]

Q. The pump could not operate in its then condition? A. That is right.

Q. You have spoken of misalignment——

A. Yes.

Q. ——as being caused by not assembling the circulating pump heads—— A. No.

Q. ——in their original order as installed by the factory. Would you explain that, please?

A. No, I didn't say the circulating pump heads. I said the pump heads.

Q. I beg your pardon. If I have misstated it, then please correct me.

A. Yes, because I don't know which heads were put back in their incorrect position.

Q. You don't know that of your own knowledge?

A. I don't know, and I don't believe anyone else does at this time; but this case here (indicating on diagram), looking in the pump from—I don't know which end they took it from; one side is marked "R" and the other side is marked "L"—right and

(Deposition of Mr. Biehler.)

left—and it may be this is numbered R-1, L-1, and R-2 and L-2, and that these flanges correspond with those markings—they should correspond.

(Discussion by counsel off the record.)

Q. I will ask you now for arbitrary purposes of [663] testimony here to mark "L" and "R" on the marks that you have referred to on the exhibit.

A. Yes——

Q. Would you do that? If you can do that and make that assumption there, then you can speak intelligently about the various parts of the motor from that assumption.

A. Well, I know that they are marked, but I don't know just where, and I don't know from which end you are looking at the pump in relation to the marks.

Mr. Howard: I will object to the witness undertaking to make markings on there of something that he has stated he does not know."

Mr. Howard: I will waive my objection.

"Mr. Hokanson: Well, I will ask the witness to answer the question, then, by marking the exhibit, and I will ask him the same question as to how the interchange of the pump heads could cause misalignment.

A. At that time—the time we built that pump—the hole in this flange, which I am marking, one with a yellow——

Mr. Howard: Just make a mark on the diagram there. [664]

(Deposition of Mr. Biehler.)

A. Yes; I am just trying to think here—now, in this flange marked "X" and in the flange marked "Z"—they have to be in perfect alignment, so they were put together opposite each other and line reamed from one side to the other in each pair of pump heads, and because they were line reamed separately they had to be reassembled in the same position in order to obtain correct alignment.

Q. (By Mr. Hokanson): Now, did the pump head—would it be numbered to correspond to the place of connection on the pump?

A. That is right; the pump flanges were marked with a number corresponding to their side and location on the pump, the same as the pump body was.

(Discussion off the record.)

Q. Could the pump be assembled without placing the pump heads in their proper position according to the markings from the factory and the pump he operated for any period of time, let's say in excess of one hour, and still maintain proper pressure?

A. That would be entirely possible. It might operate for—oh, it might not operate at all, or you might not be able to turn it over, and again it might operate for quite a time—all according to how close the head happened to align with the one that happened to belong here.

Q. Would it be apparent to you or anyone who is [665] acquainted with these pumps, or a spe-

(Deposition of Mr. Biehler.)

cialist in them, to determine from an examination of the pump whether the pump heads were properly installed?

Mr. Howard: I shall object to the question as too general; asking him if it is apparent to anyone acquainted or experienced with it. The witness can testify as to what would be apparent to him, but I don't think it is competent for him to testify as to what someone else might observe."

The Court: The objection is overruled.

"The Witness: If they looked and found the numbers, yes—that is all anyone would have to do who was any kind of a mechanic, would be to look, and if they found those numbers they would realize that they were corresponding numbers and should be placed in corresponding positions.

Q. (By Mr. Hokanson): Well, any mechanic who has had any experience with pumps in assembling the pump, a pump of this kind, should put them in their proper positions; is that correct?

A. Well, there is no getting away from it, they have to be in their proper positions.

Q. You have difficulties with this type of pump in [666] respect to leaking diaphragms, do you not?

A. No, I can't say that we do.

Q. What——

A. What diaphragm do you have reference to? I might ask you that question.

Q. The diaphragms in the pump heads.

(Deposition of Mr. Biehler.)

A. There is no reason for them to leak at all unless they are cut by some means or other—with high back-pressure caused by scaling the coil.

Q. What is the normal working pressure of these pumps?

A. Well, now, just a minute; just what do you mean by that—the normal working pressure?

Q. Well, how much pressure is exerted by these circulating pumps in the boiler?

A. Any pressure can be exerted by them up to 600 pounds, but in the ordinary boiler they are running about 100 pounds steam pressure—and normal back-pressure would probably run around 175 pounds or less.

Mr. Howard: That is, on 100 pounds steam pressure? A. That is right.

Q. (By Mr. Hokanson): Now, in this pump, could the unit have been operated if the recirculating lines were hooked up?

A. I don't know.

Q. You don't know who disassembled the pump's recirculating lines, do you?

A. That is right; they were disassembled when I first [667] saw it.

Q. And misalignment was caused, as you have been explaining, by failure to fit the pump heads into their proper place?

A. That is right.

Q. And assuming that there was a misalignment here, what effect would that have on all of

(Deposition of Mr. Biehler.)

the rest of the pump's parts?

A. There are bearings in the yoke that connects the diaphragms, and those bearings would be thrown into a bind by a misalignment, and they would very shortly score the crankshaft.

Q. How soon after continuous operation would that occur?

A. Well, it all depends on how much of a bind. There is just no answer to that question. That question is just like asking how long is a piece of string.

Q. Well, are breakdowns frequent in this type of pump?

A. No; very infrequent, I would say. It is one of the most successful types of pump that I have ever seen.

Q. If proper maintenance procedures are followed——

A. ——then about all you have to do is to keep them in oil.

Q. What is the result if you don't keep them at the proper oil level of discharge to other parts that are important in the maintenance of the pumps? [668] A. They will overheat.

Q. With what result?

A. Oh, burn out your oil light bearings, and just generally freeze up.

Q. Would that in turn cause damage to your crankshaft?

A. It can, yes—it is possible.

Q. Now, referring to what has been marked for

(Deposition of Mr. Biehler.)

identification as Claimant's and Cross-libelant's Exhibit W-1, the first item listed thereon is "Diaphragm washer," and the unit price is $1.60, and that shows that there was a quantity of six ordered. How many diaphragm washers are used in this kind of a pump? A. Six of that type.

Q. And how many "Diaphragm collars" are used? A. The same amount.

Q. And how many diaphragm washers of the type UH-6734? A. Six.

Q. Now, would you examine this Exhibit W-1 and the parts listed on it, and advise me whether the quantity listed for each part is the quantity required for use on the pump?

A. In other words, you want to know if there are any excess parts?

Q. That is correct.

A. Well, I don't know whether I can or not. I will try, however. (Witness examines the exhibit referred to.) [669]

No, I can't do it, unless I have a manual. There are some of these bearings, thrust bearings, and a few things like that, that I am not able to say whether that is the correct amount or not, because they were made by different numbers, and I wouldn't have that.

Q. Can you tell me what the cost of a new pump of this type is?

A. No, I can't right offhand.

Q. Would it be more or less than $678.86, if you know? A. I don't know.

(Deposition of Mr. Biehler.)

Q. From an examination of the parts listed on Exhibit W-1, can you state whether all of these parts would require replacement, assuming the pump heads had not been properly assembled on the pump?

Mr. Howard: If you can so state.

(No answer by the witness.)

Mr. Howard: I would like to record an objection to the question as being too general. It assumes a general condition, which seems to me makes it impossible for the witness to render an intelligent answer."

Mr. Howard: I will waive the objection.

"The Witness: Well, it is pretty hard. [670]

(Discussion by counsel off the record.)

Mr. Howard: Well, read the question.

(The pending question was read by the reporter.)

Mr. Howard: Do you understand the question?

The Witness: Yes, I understand the question, and I am unable to answer it because it would be too general an answer.

Q. (By Mr. Hokanson): Very well. Assuming that the pump heads were improperly assembled, with the resultant misalignment, causing crankshaft damage, can you state whether that condition

(Deposition of Mr. Biehler.)

would require also the renewel of parts such as the diaphragm washers, diaphragm collars, seals, flange, check valve housing, housing assembly, pump head, manifold sleeve, stand pipe and stud——

Mr. Howard: The same objection goes to this question as being too general and not being pinned down to a particular damage resulting from the particular misalignment of pump heads, which would enable the witness to give an intelligent answer."

Mr. Howard: I will waive the objection.

"The Witness: If you want to go over that one by one, there are some of them I could say yes concerning, and some of them I would have to say that I don't know. [671]

Q. (By Mr. Hokanson): Can you state as to what parts your answer would be yes?

A. Yes, it would be the seals, the bearings—thrust bearings—and what this is I don't know, "Fed. bearing," I don't know that; crankshaft, of course, and the diaphragm—I don't know about the yoke. The wristpin would be out; the wristpin bearings would be out, that is, would require replacement by that being out, and the connecting link out, and the flange——

Q. Six flanges.

A. Six flanges, yes—with that I don't know. And

(Deposition of Mr. Biehler.)

the check valve housing—no. That wouldn't have any bearing on the position of the pump head—or pump flange is what I am trying to say.

Q. In other words, replacement of check valve housing——

A. Yes, evidently it means they were worn.

Q. But it would have no relation to the type of damage that I have earlier stated?

A. That is right.

Q. What about the housing assembly?

A. I am not so sure what that is, to tell the truth.

Q. One pump head?

A. That might have been cracked by misalignment or something like that.

Q. The manifold sleeve? [672]

A. Those probably had to be renewed upon taking it apart.

Q. But not by reason of damage to them?

A. No, I don't believe so.

Q. What about the stand pipe?

A. The stand pipe—no.

Q. What about studs? A. No.

Mr. Howard: My objection, it will be understood, runs to each and all of your questions as originally stated?

Mr. Hokanson: Yes, that is right.

* * *

Q. Now, if, as you stated—and we are assuming it for the purpose of this question—the four pump

(Deposition of Mr. Biehler.)

heads were not in their proper order, why would it be necessary to replace only one pump head?

* * *

The Witness: I am just trying to think what pump head [673] it is. The pump head wouldn't have had a thing to do with the misalignment—they replaced one standpipe and one pump head—evidently one of these broke and they had to replace the standpipe and one pump head—and they replaced all of them, because either all were damaged by misalignment or some of the parts were damaged by it—I would say.

Q. Do the pump heads screw into the flanges?

A. The standpipe screws into the pump head, and the pump head is bolted to the flange.

Q. (By Mr. Hokanson): You said that someone aboard the ship told you that the pump heads had recently been overhauled. Do you remember who that was? A. Not well enough to say.

Q. Was it a member of the crew of the ship?

A. Well, as long as I feel uncertain, I wouldn't say. I know who I think it was, but maybe it is better I shouldn't say as long as I am not absolutely certain about it.

Q. But who do you think it was?"

Mr. Howard: I object to that. We have already had a ruling on the question of what has been told him on the ship as being improper.

(Deposition of Mr. Biehler.)

The Court: This is cross-examination by Mr. Hokanson?

Mr. Hokanson: Yes, Your Honor. [674]

The Court: In view of the Court's previous ruling, do you wish to proceed on this hearsay?

Mr. Hokanson: Subsequent testimony—I don't think I am waiving my original objection.

The Court: How can it be proper for you to have before the Court your cross-examination upon a subject matter ruled out? If the original inquiry is ruled out, wouldn't that take with it your cross-examination?

Mr. Hokanson: I am willing to strike what follows, Your Honor. It relates to the witness' conversation with a party to the action. [675]

"Q. You don't know, of your own knowledge, how bad the misalignment was? A. No.

Q. Did any of the men in your shop tell you how much it was off?"

Mr. Howard: I object to that as hearsay.

The Court: He included that in his report, the assisting workmen, and on that theory the objection is overruled. However, the answer relieves the objection, I think.

"A. No; they merely told me that the pump head flanges were out of position.

(Deposition of Mr. Biehler.)

Mr. Hokanson: That is all.

Redirect Examination

By Mr. Howard:

Q. Did you notice whether there was more than one connecting bolt installed in the Tanker Urania when you were on board on November 11th?

Mr. Hokanson: That is objected to as being beyond the scope of any cross-examination."

Mr. Howard: I will waive that question, Your Honor. [676]

"Q. On Exhibit W-2 there is an entry of 56.25 hours at $4.50, under the column "Labor"; did you make that entry? A. Yes, I believe I did.

Q. Is that the going rate for that type of labor?

A. $4.50 an hour; yes, that is right.

Q. And there is another item of labor of 4 hours at $6.75.

A. That should be in another column; the copy didn't line up.

Q. That belongs in the overtime column, then, does it?

A. That is right—time and a half for overtime brings $6.75 an hour.

Q. Were you able to tell what the oil level was in the pumps when you first saw the generator and the pump aboard the vessel? A. No.

(Deposition of Mr. Biehler.)

Q. Now, this operation manual that you referred to on cross-examination—for whose use is that intended? A. The man that runs the boiler.

Q. Is it also provided for the use of anybody from a ship repair yard that might make repairs of the boiler?

A. Well, yes, we have them available to anybody. I believe it is $1.00 a copy.

Q. You stated on cross-examination that, assuming that these items were improperly assembled, it was conceivable that the unit might continue to operate for [677] some time.

A. Well, it is conceivable.

Q. But for how long a time?

A. Well, as I said, that all depends on the amount of the misalignment.

Q. If the misalignment were minute, the engine might continue to operate for some time?

A. Yes.

Q. For a matter of days, do you think?

A. If it was small enough, it might continue indefinitely. That is, if it was in the tens of thousands, or something like that.

Q. Now, Mr. Biehler, if I understood you correctly, you stated on cross-examination that you did not realize the cause of the breakdown of this unit at the time you went aboard the ship and removed the pump. A. That is correct.

Q. Did you examine the head flanges at the time to determine whether the numbers corresponded

(Deposition of Mr. Biehler.)

with the other numbers? A. No, I did not.

Q. But you could have done that at that time?

A. Oh, it could have been done—by turning the pump upside down—which is quite a chore in itself.

Q. You would have had to turn the pump upside down to [678] check on it?

A. I believe the numbers are on the bottom of the case—I am not sure, however.

Q. If the numbers were on the bottom side of the case, it would be necessary to take the pump off?

A. That is right.

Q. To determine whether it was misalignment?

A. Yes, sir.

Q. Was there any indication that that had been done aboard this ship?

A. No, I believe the pump was fastened down when I got there.

Mr. Howard: Those are all the questions I have.

Recross Examination

By Mr. Hokanson:

Q. Mr. Biehler, a pump can be fastened down and removed and fastened down again a number of times without any visible indication as to whether or not it has been removed; isn't that correct?

A. That is entirely right.

Q. So that before that dismantling, it might have been removed and put back on board the ship again without your knowing it? A. Oh, yes.

Q. Did I understand you correctly to say that

(Deposition of Mr. Biehler.)

you were [679] not certain whether there were numbers on the flanges of the pump heads to correspond?

A. No, you misunderstood me there. I said I didn't know where the numbers were. There definitely are numbers on that type of pump.

Q. This pump is not so complicated that a competent mechanic couldn't put it together, is it?

A. No, it isn't that complicated.

Q. And it would be rather stupid of a mechanic to put the pump heads in the wrong place, wouldn't it?

Mr. Howard: Just a minute. I shall object to the form of that question. I think counsel is certainly entitled to lead the witness on cross-examination, but to ask the witness to testify that somebody was stupid if they do something—I think that is highly improper."

Mr. Howard: I object to the form of the question, Your Honor.

The Court: I think that should be sustained.

Mr. Howard: Line 5, page 73.

"Q. In other words, it would be your testimony that a reasonably competent mechanic in assembling this pump, if [680] he put them together wrong, wouldn't be doing something that was obviously negligent?

(Deposition of Mr. Biehler.)

A. Well, I believe that the manual gives a complete breakdown of the pump and tells how it should be put back together again, and anyone, when they take something apart—a mechanic especially—will ordinarily mark it to put it back the same as when it came apart—when there are several similar parts; so it would be more carelessness than anything else if it was put together wrong.

Q. Do you mean it would require a careless mechanic to put these together wrong?

A. Well, I cannot say that.

Q. Well, what would you say?

A. Well, I would say that the man was careless in that particular instance, but he might not be careless at all times.

Q. How big is this pump in terms of outside dimensions?

Mr. Howard: I shall object to that as improper recross-examination."

The Court: Overruled.

"Mr. Hokanson: You may answer.

A. Oh, I would say—well, I would have to measure [681] it out here—I would say roughly about two feet long by about 12 to 14 inches wide—the main body of the pump, that is—this part in here (indicating on diagram).

(Deposition of Mr. Biehler.)

Q. And if the pump is damaged, how long does it take you to disassemble it?

A. Well, now, that I don't know—just how long it would take. I have never disassembled one of that type of pump, and, of course, it would depend a lot on the man disassembling it. If he knew nothing about it, it would take him quite a while.

Q. But a person acquainted with it would be able to take it apart in about how long?

A. Oh, it would be just a guess on my part, but I should say in three hours.

Q. Well, if the parts were damaged, requiring replacement, how long would it take you to put it back together again with new parts on hand?

Mr. Howard: I shall object to that as not specific as showing the nature of the damage and the number of the parts that would have to be replaced and installed—but this is so general that surely the witness wouldn't give an intelligent answer."

Mr. Howard: I will waive my objection. [682]

"Mr. Hokanson: Your answer is that you couldn't say?

A. That is right; there is so many things that go into that.

Q. Yes, I understand; but specifically how long would it take you to put it back together again with these parts involved.

(Deposition of Mr. Biehler.)

Mr. Howard: I shall object to that again as not sufficient basis shown for the answer, in that the witness hasn't been apprised of the extent of the damage caused, nor investigated the reinstallation of the particular parts enumerated; and, further, on the ground that this is improper recross-examination."

Mr. Howard: I will waive my objection.

"The Witness: I can't answer the question anyhow.

Q. (By Mr. Hokanson): You don't know?

A. No, I don't know. There are too many things enter into it.

Mr. Hokanson: For the record, the purpose of this examination on recross-examination is to develop further the matter of the number of hours spent in repairing this pump, which was brought out on redirect examination. [683]

Q. Now, Mr. Biehler, would you say that 56¼ hours at $4.50 an hour and for hours at $6.75 an hour, a total of 60¼ hours, was a reasonable period of time to put this pump together involving the reassembling of the parts listed on Exhibit W-1?

Mr. Howard: I shall object to this last question on the ground that the witness has testified on direct examination and on cross-examination that he did

(Deposition of Mr. Biehler.)

not attend in the shop of the Clayton Manufacturing Company at the time this pump was disassembled and repaired, his testimony being that he only participated in the removal of the pump from the unit aboard the vessel and its reinstallation after it had been repaired in the shop where it was manufactured."

Mr. Howard: I will waive my objection.

"Mr. Hokanson: You may answer the question as an expert on pumps, Mr. Biehler.

A. The time shown on that service order isn't the time it took to repair the pump. The time that it took to repair the pump is not that time—that time shows the complete time that myself and other men, and possibly several others, spent on the job.

Q. How much of that time was passed on your time discussing this matter with Mr. Antippas?

A. Very little of it.

Q. How long did it take you to remove the pump from the vessel?

A. Well, this time, as I said before, includes all my travel time and the time of removal and the time in the shop, and all other kinds of time that was spent on it, so—I was down there one afternoon, practically the whole day, when the boat came in, and I was there a certain time in the morning when

(Deposition of Mr. Biehler.)

the boat didn't get in until afternoon, and all of that time is counted on my time.

Q. At how much per hour? A. $4.50.

Q. Did they give you an estimated time of arrival when you went down there to wait for the boat? A. Yes.

Q. And how late were they?

A. That I don't recall.

Q. And who charges $6.75 per hour?

A. That is time and a half.

Q. For overtime? A. Yes.

Q. Why was overtime required on this job?

A. Let's see—what was that? I don't recall exactly. [685] It would just be a guess on my part, but it was quite evidently work done overtime. It took me until after 4:30 to get back to El Monte after working on the boat.

Q. Could that pump be repaired aboard ship?

A. Yes, if they had the proper equipment or the facilities to make the proper equipment, it could be done—but it would be a large undertaking.

Q. Could you repair it aboard ship if you had the parts with you?

A. Well, that question can be answered the same way—if they had the proper equipment aboard ship—if they had the presses and one thing and another that you needed to put the pump together with—it could be done, but it would have cost more money to have repaired it aboard ship than it would to take it up to the plant as we did."

(Deposition of Mr. Biehler.)

Mr. Hokanson: I move to strike the last portion of the answer as not responsive, with reference to the cost of repair aboard the ship.

Mr. Howard: I think that has a bearing upon the question.

The Court: I believe the Court should overrule that, and that is the order. [686]

"Q. By the Clayton Manufacturing Company?

A. Oh, yes—if I had done it aboard the ship.

Mr. Hokanson: That is all.

Redirect Examination

By Mr. Howard:

Q. If a shipyard in another city undertook repairs on the unit that we are speaking of, would you recommend that they obtain a manufacturer's manual on it before making the repairs?"

Mr. Hokanson: That is objected to as improper redirect examination.

The Court: It is speculative. The motion is granted.

Mr. Howard: Then that completes the deposition of this witness.

At this time, I would like to offer Identification A-15.

The Court: Is there any objection?

Mr. Hokanson: I want to register the objection that the document contains a hearsay statement admitted by the witness for the record. [687]

The Court: Which one are you referring to?

Mr. Hokanson: The second page of the document, wherein comments are made with respect to the damage.

The Court: I believe included in the objection is a notation on the second page, "Pump recently repaired, parts assembled incorrectly, resulting in misalignment and crankshaft damage." That is the phrase referred to?

Mr. Hokanson: Yes, and I object to the first page also.

The Court: We have already gone over this, haven't we?

Mr. Howard: Yes, in his testimony the Court ruled as to that portion of it, but I offer the exhibit as to the other parts, being a report made in the regular course of business.

The Court: The Court strikes that part of page 2 objected to, which part the Court just read, and the Court will disregard that statement made on that exhibit. Now, what is it with respect to the first page?

Mr. Hokanson: With respect to the first page, I object to the admissibility of that document on the ground that the witness has not established that all of the parts and the time that make up the total

amount of the invoice were necessary and proper to the repair of the pump. [688]

Mr. Howard: I examined this witness in the deposition, if the Court please, as to the charges, to the extent of his knowledge. That is the only testimony that I have from this witness on it.

The Court: What did he testify on it? Did he discuss the hours, or the reasonableness thereof, and the reasonable per-hour charge?

Mr. Howard: Yes, Your Honor. On cross-examination, he went into the question of whether all of the parts listed on the first page might have been included in the repairs necessary to this unit, and since he was not present at the factory when the unit was opened up, he could not testify that all of the parts were necessary.

The Court: I believe his testimony prima facie authenticates the labor charge. I am not so strongly convinced about the parts, in view of what you have just said about the testimony.

Mr. Howard: I offer it for what it is worth in establishing this account.

The Court: It seems to me you have to prove the parts were needed.

Mr. Howard: If the Court would like to reserve ruling on the admissibility of the first page of this exhibit, I will undertake to get additional testimony. [689]

The Court: I will reserve ruling on the admissibility of the whole exhibit, both pages. The part

which I just a moment ago ordered stricken and the Court will disregard it, that will stand no matter what may happen in the future with respect to the remainder of page 2.

Mr. Hokanson: Your Honor, so that there may be no misunderstanding, I wish at this time to renew my objection to all of this testimony relating to subsequent damage or repairs to the vessel on the ground that the evidence as it now stands on the libel demonstrates that this ship was accepted and approved by the owners and classified and approved by the American Bureau of Shipping, and that anything that happened thereafter is a risk of the owner and cannot properly be attributed to Commercial Ship Repair, the libelants in this action.

The Court: That question has been raised before, has it not, and the Court has ruled upon it?

Mr. Hokanson: Yes, Your Honor.

The Court: The same ruling as previously made, with the understanding as previously noted that the objection goes to this whole line of testimony, and the same ruling whenever appropriately applicable. The Court makes the same ruling as and when the objection [690] may be regarded as having been made. Also, it is without prejudice to counsel renewing the objection at any and all stages of the proceedings as he may be advised.

Mr. Hokanson: May I at this time, without prejudice to my objection, offer Libelants' Exhibit

14, which is the document identified by Mr. Biehler in his testimony that has just been read.

Mr. Howard: No objection.

The Court: It is admitted.

(Libelants' Exhibit 14 received in evidence.)

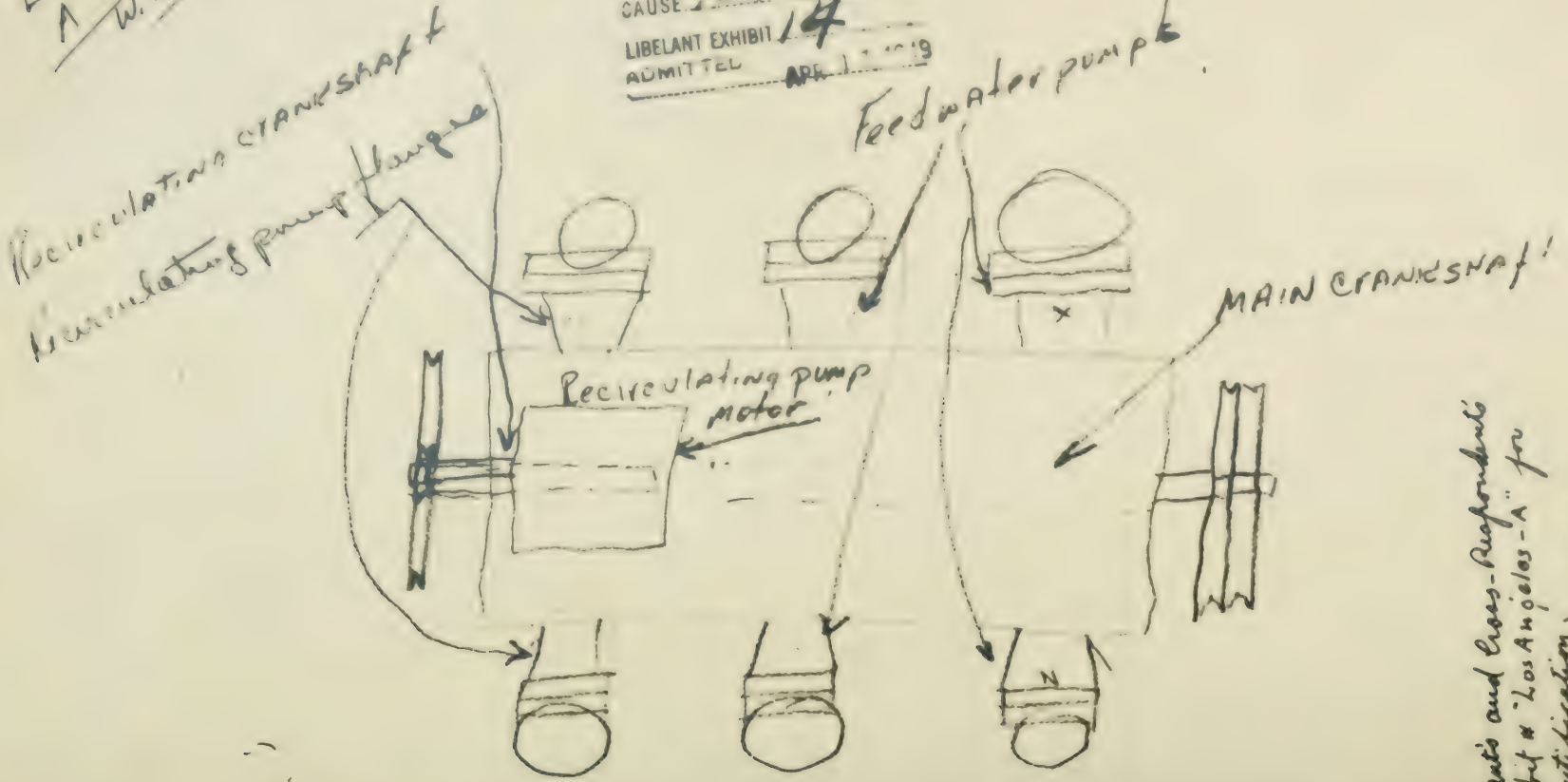
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CAUSE 1-266

LIBELANT EXHIBIT 14

ADMITTED APR 1 7 1949

12322



Libelant's and Cross-Respondent's Exhibit # "Los Angeles-A" for identification,
W. R. Heatherly, N.P.
March 24, 1949.

The Court: Those connected with this case are excused until tomorrow morning at 10 o'clock.

(At 4:45 o'clock p.m., Monday, April 11, 1949, proceedings adjourned until 10:00 o'clock a.m., Tuesday, April 12, 1949.) [691]

April 12, 1949, 10:00 o'clock a.m.

Mr. Howard: I would now like to read the deposition of S. W. Newell.

Mr. Hokanson: Your Honor, may I address the Court? So that there may be no misunderstanding, may it be understood that any evidence heretofore introduced by either side touching the cross libel incidentally while presenting evidence on the libel itself may be considered as going to the cross libel, and that additional evidence need not be introduced covering the same material merely because of the order of proof? [692]

The Court: Is there any objection?

Mr. Howard: I think in view of the nature of the case and the necessity for depositions and numerous witnesses, that is an entirely reasonable request, and I acquiesce in it.

The Court: It is approved by the Court.

I will say to both sides, you would have to show me some very convincing authority to keep the Court from taking that attitude in this case, because it seemed to me at the beginning of the trial inconvenient that you should dispose of one case

entirely and keep anything from going in that was not important with respect to the other, that is, between the libel and the cross libel.

Mr. Howard: I believe we can start on page 3, line 18, of Mr. Newell's deposition.

In this case, the witness did sign the deposition. He has read and signed the deposition.

DEPOSITION OF SIDNEY W. NEWELL

"Q. (By Mr. Howard): Mr. Newell, will you state your full name and address, please?

A. Sidney Wynne Newell. My home is 2622 Clay Street in Alameda, California.

Q. What is your occupation, Mr. Newell? [693]

A. Vice-president, The Union Diesel Engine Company.

Q. Where does that company maintain its principal office?

A. 2200 East Seventh Street, Oakland, California.

Q. Mr. Newell, do you expect to be in Seattle, Washington, for any reason on or about the 6th day of April, 1949? A. No, I do not.

Q. This deposition is being taken down by the court reporter and will be transcribed and typed up from the notes that he is making. Do you consent to this deposition being read in evidence from the notes as transcribed by the court reporter without the necessity of your reading the testimony back

(Deposition of Sidney W. Newell.)

and verifying the answers that you give, and signing the deposition.

A. I think I ought to read it first.

Q. You desire to read it?

A. I should prefer to.

Q. Mr. Newell, will you please state what experience you have had by way of education or training as an engineer?

A. I was graduated from Webb Institute of Naval Architecture in New York City in 1937. Subsequent to that date I have been employed by the Union Diesel Engine Company in various capacities.

Q. What degree did you receive from Webb Institute of Naval Architecture?

A. I received a Bachelor of Science degree in Naval Architecture and Marine Engineering. [694]

Q. Since 1937 has your principal work been with Union Diesel Engine Company?

A. That has been the only job I have had.

Q. Does that work involve the engineering aspects of the construction, manufacture of Diesel engines? A. Yes, it does.

Q. Mr. Newell, have you brought with you today a manual relating to the Diesel engine manufactured by your company which was installed aboard the former Navy tanker YO-73?

A. Yes, I have."

(Deposition of Sidney W. Newell.)

Mr. Hokanson: Mr. Howard, at this time for the record I would like to lodge an objection to the introduction of any testimony relating to the main engine of the tanker Urania on the ground and for the reason that it has already been established by the evidence that any work on the main engine was done subject to the supervision of the chief engineer and representative of the owner, and that consequently any alleged defects or damages that subsequently occurred are not chargeable and are not proximately related to any of the work done by the cross-respondent in this action.

The Court: The objection is overruled. Do you wish the same arrangement with respect to the continuing effect of your objection?

Mr. Hokanson: May that be understood?

Mr. Howard: It is agreeable, Your Honor.

The Court: It is agreeable to the Court. Let that be understood.

Mr. Howard: May we have that exhibit marked for identification?

(Union Diesel manual marked Respondent's Exhibit A-16 for Identification.)

"Q. Can you identify that for us, please?

A. It is identified as Instruction book and parts list for main propelling engine installed in U. S. Navy gasoline, fuel oil and water barges, contracts NXs6407 and NXss-6407, YO 65-79, YOg 5 and 6,

(Deposition of Sidney W. Newell.)

YO 105-133, YOg 32-37, YW 83-95, Manufactured by the Union Diesel Engine Company, Oakland, California, U. S. A., 1943.

Q. Do you have an extra copy of that manual available that can be used for the purpose of this deposition?

A. You can use that copy there for the purpose of the deposition.

Q. Do you desire to have this returned to you?

A. Yes, I do. It is the only one we have left.

Mr. Howard: This is off the record. [696]

(Remarks off record.)

Mr. Howard: I would like to have this identified by the Notary as Claimant's and Cross-libelant's Exhibit O.

(Notary Public marks Exhibit O.)

Q. (By Mr. Howard): Mr. Newell, please feel free to refer to this manual that has now been identified as our Respondent's Exhibit A-16. Will you kindly give us a brief statement describing the main engine, which was installed aboard Tanker YO-73?

A. First of all, the engine is identified as a naturally aspirated model V-6, direct reversible Union Diesel engine. It has six cylinders, each 14 inch bore by 19 inch stroke. The engine develops 560 horsepower at 325 r.p.m. It is one of approximately a hundred that were built for the same type of vessel for the Navy Department."

(Deposition of Sidney W. Newell.)

Mr. Howard: I would like at this time to offer Respondent's Exhibit A-16.

Mr. Hokanson: No objection.

The Court: It is admitted.

(Respondent's Exhibit A-16 received in evidence.) [697]

"Q. Referring to figures A and B in Exhibit A-16, does that truly represent the side view from opposite sides of the main engine under discussion?

A. Yes. I believe that is an actual photograph of the YO-73 engine. If it was not, they are so closely alike you couldn't possibly tell the difference."

Mr. Howard: If the Court please, the witness is referring to figures A and B in Exhibit A-16.

The Court: Starting with Figure 1, the sea water system? They are numbered Figures 1, 2 and 3.

Mr. Howard: I believe I can point it out to Your Honor.

"Q. I wonder if you would point out to us the principal parts of this engine such as the location of the cylinders, the cooling system, the air starting system and points of that general description?

This is off the record.

(Remarks off record.)

(Deposition of Sidney W. Newell.)

A. Since this is not a drawing, it is truly a photograph which has not been retouched except to take out the extraneous background we can't show too much of the interior of the engine, but basically the engine consists of a bed. [698]

Q. You have marked on figure A of Respondent's Exhibit A-16 an arrow under which has been marked the word "bed".

A. That is correct. The bed is the main structural member of an engine. It runs substantially the entire length of the engine. Seated in the bed which I cannot show too well on this photograph is a crankshaft which has eight main bearings. It is located athwartships in the center of the bed itself.

Q. Can you indicate by an arrow the location of that crankshaft although it wouldn't show as it is inside the engine itself?

A. Well, if you will refer to photograph B in Respondent's Exhibit A-16, we can see the eighth main bearing which I will identify as number 8 main bearing of the crankshaft. That shows one end of it. On photograph A it is a bit difficult to identify just where the crankshaft comes through. I can indicate in general that this is the approximate location of the crankshaft's forward extension.

Q. And you have marked that with an arrow with those same words on figure A?

A. That is correct, sir. Above the bed there is the word "Union" imposed on each cover giving you access to the crankshaft, the bearings, the con-

(Deposition of Sidney W. Newell.)

necting rod bearings and other principal oiled parts of the engine.

Q. What is above those doors or covers? [699]

A. Above those doors—let us put it this way, the doors themselves are located on the crankcase which I will mark with the word, "crankcase". Above the crankcase are the cylinders of which there are six.

Q. And you have marked the cylinders with an arrow on figure A?

A. Yes, I have marked No. 1 cylinder. Above the cylinders there are the heads one of which I have so indicated. Above each cylinder rests a camshaft housing which I have so marked. The camshaft which is located within the camshaft housing is driven from the camshaft through gears up through a vertical shaft which I have so indicated.

Q. On figure A? A. On figure A.

Q. Does either of these pictures show the lubricating oil cooler for the main engine?

A. Yes. Figure B shows the lubricating oil cooler which I have marked.

Q. Does figure B show the fresh water coolers for the engine?

A. Yes, there are two fresh water coolers which I have so indicated.

Q. On either figure A or figure B, can you show us the tubing by which the lubricating oil is directed into the cylinder rubbing surfaces?

A. Yes, there are two methods of lubricating the cylinders. [700] One is through a pressure lubricator

(Deposition of Sidney W. Newell.)

which I have indicated on figure A. This box is the pressure lubricator.

Q. You have circled the box that is the pressure lubricator?

A. That is right. I have circled it in red pencil.

Q. Now you have circled the pressure lubricator in red pencil? A. That is correct.

Q. Did you say there was another method of lubricating the cylinders?

A. This pressure lubricator leads through a copper tube to each cylinder such as I have circled on No. 4 cylinder, all on figure A. I have marked a line to cylinder No. 4.

Q. That is circled to show the tubing entering cylinder No. 4?

A. Yes. Also on figure B you can see the corresponding lines to cylinder No. 1, cylinder No. 2, cylinder No. 3, cylinder No. 4, or rather I should say, cylinders Nos. 1 and 2. You cannot see cylinder No. 3, but you can see cylinders Nos. 4, 5 and 6.

Q. You have circled those with a red pencil on figure B? A. On figure B, yes, sir.

Q. Is the lubricating oil cooler also known as a heat exchanger?

A. Yes, a lubricating oil cooler is a specific type of heat exchanger. [701]

Q. Can you describe generally to us how that lubricating oil cooler functions?

A. This particular lubricating oil cooler is very much like the radiator in your automobile with the exception that the lubricating oil passes through

(Deposition of Sidney W. Newell.)

the cooler where water passes through the radiator on your automobile and sea water passes through the cooler where air passes through the radiator on your automobile.

Q. What material actually is used in the interior and internal sections of that cooler?

A. That cooler was built with a so-called cupronickle material. The coolers were built and tested to Navy Department specifications 66-C-1-(Int).

Q. Does the oil flow through the cooler or heat exchanger by gravity or is it forced through under pressure?

A. The lubricating oil is forced through the lubricating oil cooler by means of a lubricating oil pressure pump which I have circled in red on figure A and so indicated.

Q. At what pressure does the oil run through the cooler normally?

A. Approximately 20 pounds per square inch.

Q. Does that vary?

A. That pressure may vary. We have a pressure regulating valve which I have marked on figure A. The working pressure is approximately 20 pounds per square inch as mentioned before. It may run as high as [702] 25 pounds per square inch, but is under the control of the operating engineer.

(Deposition of Sidney W. Newell.)

Q. Does your manual, Respondent's Exhibit A-16, indicate the recommended pressure to maintain on the lubricating oil cooler or the pump?

A. Yes. On page 15 the instruction book says, "A pressure of 15-20 psi is sufficient to reach all bearings and lubricate them thoroughly. Use Navy Symbol 9250 oil from normal operating conditions. If the fresh water inlet temperature exceed 130° F., Navy Symbol 9370 may be required to control consumption within normal limits. Oil is Navy Spec. 14-0-13."

Q. Does that refer to the pressure running through the lubricating oil cooler, or does that refer to the pressure to the bearings?

A. That refers to the pressure as it would be indicated on the gauge board on which there is a lubricating oil pressure gauge. Unfortunately I can't identify which one of those gauges is the lubricating oil pressure gauge.

Q. And that construction that you have just identified in Respondent's Exhibit A-16, refers to the pressure through the lubricating oil cooler?

A. I believe that is correct. As I recall the details of the piping on this engine, I believe that it is not possible to shut off the lubricating oil from the lubricating oil cooler. In any event, you can't get pressure in the lubricating oil cooler which is more than [703] the pressure which we have been discussing, but it might be possible that there is on that engine valves which would enable you to isolate your cooler. I can't recall for sure

(Deposition of Sidney W. Newell.)

how that is done, and I can't identify from the photograph there.

Q. Referring you to the instructions on page 15 of Respondent's Exhibit A-16, the paragraph just below that marked by you, does that relate to the pressure of the oil through the lubricating oil cooler?

A. The paragraph below says that, "the relief valve, located near the pressure pumps, should be set to give 18 psi pressure on the main bearing (gauge marked 'Lubricating Oil After Filter') when the oil is warm and with the filter in operation, and the engine operating at rated speed." That relief valve is the valve which I identified on figure A as the pressure regulating valve.

Q. What type of liquid is used to cool the oil in the lubricating oil cooler?

A. Sea water is used to cool the lubricating oil.

Q. That would be salt water under normal conditions? A. Yes.

Q. Can you tell us what pressure the salt water should go into the lubricating oil cooler?

A. On page 30, the instruction book provides that the salt water pressure at rated r.p.m. of cooling water should be [704] approximately seven pounds per square inch.

Q. Mr. Newell, will you describe for us the system for cooling the cylinders and cylinder liners in the main engine on this vessel.

A. The system is in general divided into two parts; first, the fresh water system and secondly, the salt water system. The fresh water system has

(Deposition of Sidney W. Newell.)

its own engine driven pump which supplies the necessary energy to circulate the fresh water through the engine.

Q. Through what parts of the engine, please?

A. This pump discharges through a manifold which extends the length of the six cylinders of the engine. The water is divided off the manifold through each cylinder, through its related cylinder head, a portion of it passing through the exhaust valve, the remainder of it passing through a port in the cylinder head where it is then collected into another manifold which leads all of the fresh water into the exhaust manifold. After it leaves the exhaust manifold, the fresh water is led down through piping to two fresh water coolers through which it passes in parallel. The water is then taken from these fresh water coolers back to the suction of the fresh water circulating pump. There are one or two little variations from that general outline. For example, there is a thermostatic valve installed which will bypass the coolers to regulate your jacket water temperature. Actually the [705] water from the exhaust valves goes into a separate header or manifold of its own and is led directly back into the piping thus bypassing the exhaust manifold, but in general, I think that gives a good outline of the fresh water system.

Now, on the salt water system, it also has a positive displacement circulating pump.

Q. And which parts of the engine does that serve?

(Deposition of Sidney W. Newell.)

A. The salt water pump discharges into a pipe which leads toward the lubricating oil cooler. Some of the salt water will pass through the lubricating oil cooler. The amount which will pass through the lubricating oil cooler is controlled by a valve which is manually actuated. The rest of the salt water will bypass the lubricating oil cooler. Then the salt water runs through two jacket water coolers in series. There is a control valve on it also.

Q. Referring you to figure 1, on page 43 of Respondent's Exhibit A-16, Mr. Newell, does that outline the cooling water system installed in this engine?

A. Yes, figure 1, on page 43 describes it.

Q. The fresh water system is indicated by solid lines? A. That is correct.

Q. It indicates the channel or course of the fresh water through the engine?

A. That is correct.

Q. And the dotted line shows the course of the salt water?

A. That is correct. After the salt water passes through [706] the jacket water coolers or heat exchangers, it is then discharged through the overboard discharge.

Q. Going back to the fresh water cooling system, do I understand that the fresh water circulates in an area between the cylinder liner and the cylinder?

A. That is correct.

(Deposition of Sidney W. Newell.)

Q. The fresh water serves as a coolant for that particular area of the engine?

A. Yes, sir. The fresh water cools the cylinders and cylinder liners.

Q. Generally speaking, the salt water serves to cool the fresh water or to cool the lubricating oil that runs through the engine?

A. That is correct.

Q. Figure 2, on page 44 of Respondent's Exhibit A-16—will you tell us what that represents, please?

A. That diagrammatically illustrates the lubricating oil system.

Q. Is the temperature of the lubricating oil as it leaves the heat exchangers affected by the temperature of the sea water which is brought in to serve as a coolant? A. Yes.

Q. How is that regulated?—May I state that question again? How can that be regulated to maintain a constant temperature on the lubricating oil as it leaves the heat exchanger? [707]

A. That is regulated by controlling the amount of sea water which is permitted to pass through the lubricating oil cooler. This valve I have indicated is a valve for the salt water supply to the lubricating oil cooler which I will indicate in red on figure B, page 6.

Q. Is that manually or automatically operated?

A. That is manually operated.

Q. Will you describe briefly to us how the gears

(Deposition of Sidney W. Newell.)

at the upper and lower ends of the vertical shaft are lubricated?

A. The gears at the upper and lower ends of the vertical shaft are lubricated through either or both a dip system or by direct jets of lubricating oil through tubing from the lubricating oil pressure manifold.

Q. Is the same type oil used to lubricate those parts as is used to lubricate the rubbing surfaces inside the cylinder lining? A. Yes, the same.

Q. The same source for the oil?

A. The same source, yes.

Q. You mentioned a dip system or a dip. Will you elaborate on that, please?

A. In the camshaft housing we have a pocket or trough which is partially filled with lubricating oil so that in rotating each tooth of one of the gears will be immersed in the lubricating oil.

Q. Does that dip system supply both the gears on the upper [708] and lower ends of the vertical shaft?

A. No, it supplies only the upper gears.

Q. How are the lower vertical gears lubricated?

A. By jets of oil through the copper tubes which lead from the lubricating oil pressure headers.

Q. What is the function of this vertical shaft?

A. The vertical shaft connects and times the relative locations of the crankshaft and the camshaft as well as drives the lubricating oil pressure pump, the fuel oil pressure pump, the governor

(Deposition of Sidney W. Newell.)

and miscellaneous other necessary functions to make the engine operate.

Q. Is the source of supply for the lubrication of both ends of the vertical shaft the same?

A. The basic source of supply is the same. The detailed tubes which spray oil onto the gears are different, but they come from the same basic source.

Q. After that oil has been used on the vertical gears, does it go back into the same tank that the oil from the cylinders and crankcase goes to?

A. Yes, that all drains down into the bed and it is then pumped through the lubricating oil sump pump back to the lubricating oil day tank from where it is taken by pressure pump and then forced into the engine for reuse.

Q. At what points on the lubricating oil system are there filters installed? [709]

A. There is a metal edge type filter or strainer through which all the lubricating oil passes immediately after it is discharged by the lubricating oil pressure pump.

Q. Does that show on either diagram A or B on Respondent's Exhibit A-16?

A. Yes, it shows on diagram A, and I have marked it as lubricating oil strainer. There is also a lubricating oil filter which is of the partial flow type that is not shown on either figure A or B, but connects two places on figure B, which I have circled and marked, "To lubricating oil filter". This filter is of the absorbent type that is piped into

(Deposition of Sidney W. Newell.)

the vessel by the ship builder and may or may not be used at the discretion of the operating personnel.

Q. Are there any other filters installed on the main engine for the purpose of filtering the lubricating oil?

A. No, there are none—pardon me; yes, there is one. There is a course basket type strainer which I have marked as lubricating oil basket strainer on figure A. All of the lubricating oil as it leaves the sump in the bed of the engine passes through this strainer before it goes to the lubricating oil sump pump from which it is returned to the lubricating oil day tank.

Q. Are any of these strainers or filters that you have just referred to located between the lubricating oil cooler and the tubing or terminals entering into the cylinders and liners? [710]

A. There is no filter or strainer located between the lubricating oil cooler and the rubbing parts of the engine.

Q. How many bearings are there on the vertical shaft, Mr. Newell?

A. There are three bearings on the vertical shaft. There are two radial bearings of the babbitted type, one located in the camshaft housing, another located on the bed, also in the bed there is located a ball type thrust bearing.

(Deposition of Sidney W. Newell.)

Q. Do the bearings in the lower part or at the lower end of the vertical shaft constitute an integral part of the machinery connected with the drive shaft operating the propeller on the vessel?

A. If we will look at page 60 in figure 21, entitled, vertical shaft thrust bearing, we will see the bearings located at the lower end of the vertical shaft. There are identified by cross-hatching——

Q. Or is there a number symbol?

A. I can't pick up the number symbol. It is cross-hatching, the babbitt bearing of which I spoke a moment ago, then there are two bearings identified as 1455, which are in duplicate, which I referred to as ball type thrust bearing. It is actually two roller bearings but I have identified it for simplicity as a ball.

Q. The babbitt type bearings are identified on figure 21 by an arrow leading to the No. 1455-A?

A. No, sir. The babbitt bearing is identified by part No. 1452 which is actually a composite part consisting of a cast iron housing identified by slant lines which we in the shop line with babbitt material which is indicated by the cross hatched portion.

Q. Will you tell us how the babbitt bearings are lubricated?

A. The babbitt bearing is lubricated in the lower portion by means of a pressure lubricating oil line, the provisions for which are shown on figure 21.

Q. You have circled that with a red pencil?

(Deposition of Sidney W. Newell.)

A. I have circled that with a red pencil and marked it, "Lubricating oil connection".

Q. Oil is forced into those babbitt bearings under pressure then?

A. There is but one babbitt bearing there and that babbitt bearing is provided with at least one oil groove which is indicated on figure 21 by a clear portion which exists between the babbitt lining of part No. 1452, which we have already discussed and part No. 1455-A, which is the vertical shaft lower sleeve.

Q. How are the top bearings lubricated, please, Mr. Newell?

A. Apparently the instruction book does not contain a cut of that bearing, but it is in general similar in construction and similar in lubricating principle to the bearing on the lower end of the vertical shaft. [712]

Q. Is the oil furnished to those parts under pressure? A. That is correct.

Q. Mr. Newell, did the Union Diesel Engine Company supervise the installation of that main engine aboard the Navy tanker YO-73?

A. Our contract with the Navy Department to whom we actually sold the engine provided that we were to run torsiographic tests, and I believe in general check the installation. The facts of the matter are that I spent a week with this particular engine on this particular vessel at the time its installation was completed in the yard of Albina

(Deposition of Sidney W. Newell.)

Engine and Machine Works in Portland, Oregon.

Q. In what year would that have been?

A. That was in April, 1943.

Q. When you were last aboard the tanker Urania?

A. I was aboard the tanker Urania in November, 1948.

Q. And where was the vessel located at that time? A. Craig Shipyard, Long Beach.

Q. Prior to that time had your company received a request from the owners or operators of the vessel to furnish assistance in repairing the main engine?

A. On October 27th, 1948, we received a telegram signed, Compania Naviera Limitada, Seattle, which read, "Tanker Urania YO-73, main engine 560 horsepower, serial No. 42538 needing urgently vertical shaft drive No. 1490, also vertical [713] shaft cross bearing No. 1403. Stop. Vessel due within three days Los Angeles, California. Agent General Steamship Corporation Limited, 541 South Spring Street where please send air express above parts soonest. Stop. Please confirm by cable."

Q. Do you have that telegram with you now?

A. I have a copy of it.

Q. And you have read from a copy of the telegram as it appears from your record?

A. That is correct.

Q. And what was the date of that telegram, please?

(Deposition of Sidney W. Newell.)

A. We received that telegram on October 27th, 1948.

Q. Is that the first request you had from the Compania Naviera Limitada for assistance on main engine repairs?

A. No,—well, it was the first—I believe it was the first direct communication we had received from them. Prior to that date we had been contacted by a number of individuals to supply other parts.

Q. What individuals had requested parts from you?

A. I am not sure that I have all of the record, but my notes indicate that on February 25th, 1948, we received an inquiry from McGinity and McDonald in Seattle inquiring about cylinder liners and pistons. We also heard from Willamette Iron and Steel Company, and on May 25th, 1948, Berg and Williams wrote to us, "We are about to purchase the motor vessel YO-73 now lying at Seattle, Washington." Some [714] of the others who contacted us about it were Fisheries Supply Company in Seattle and Diesel Engineering Company in Seattle.

Q. Did you supply any parts or services for this vessel during the months of August, September or October, 1948, either to the owners of the vessel or to Commercial Ship Repair?

A. Yes, we supplied parts. I cannot recall and I have no notes here that positively identify to whom we supplied parts. I recall that directly or

(Deposition of Sidney W. Newell.)

indirectly on behalf of one Williams we sent some parts which, as I recall now, consisted of five cylinders to Seattle.

Q. Do you know when that was?

A. No, the only record that I have is that on August 2nd, 1948, we received a letter signed by P. S. Antippas advising that material was required in Seattle.

Q. Did you receive any request from Commercial Ship Repair at Seattle or Winslow, Washington to supply the services of a factory representative in connection with any repairs that were to be undertaken to the vessel Urania during the months, August, September or October, 1948?

A. No. The only record that I have is that in early September, 1948, I talked to Mr. Williams and on September 9th, 1948, I instructed Mr. John De Polo in Tacoma, Washington to, "Do work on YO tanker as directed and [715] authorized by Mr. Williams."

Q. How do you spell Mr. De Polo's name?

A. D-e P-o-l-o.

Q. Is he an employee of Union Diesel Engineering Company?

A. No, he is not a regular employee of The Union Diesel Engine Company. He worked for us a while during the war on engines similar to this one as a service engineer in Seattle, Portland and general ends of the world up there.

Q. Did your company pay Mr. De Polo for the

(Deposition of Sidney W. Newell.)

services that you instructed him to furnish to the vessel?

A. Mr. De Polo did not furnish any services to the Urania.

Mr. Hokanson: I object to the answer on the ground it is not responsive.

Q. (By Mr. Howard): Did Mr. De Polo furnish any services to the Urania?

A. He did not.

Q. Why? A. He was never called.

Q. Do you know of your own personal knowledge whether any other factory representative or representative of your company furnished any services to the tanker Urania at Winslow, Washington during August, September or October, 1948?

A. Not to the best of my knowledge.

Q. If any services had been requested would you know of them? A. I should think so.

Q. Now Mr. Newell, you stated that you were aboard the [716] tanker Urania at Long Beach in November. Do you have the date in November?

A. My notes indicate that I was aboard the vessel on both Friday, November 12th and Saturday, November 13th, 1948.

Q. And what was the occasion for your being aboard the tanker at that time?

A. I was on a trip to Southern California. The vessel was in there. They had had trouble and I was interested in finding out what I could do about the job.

(Deposition of Sidney W. Newell.)

Q. What was the nature of the inspection that you made aboard the vessel at that time?

A. I tried to find out what had happened. I tried to find out what the men were doing to correct the trouble and to prevent its recurrence.

Q. What was the condition of the main engine at that time, was it torn down?

A. Substantially dismantled.

Mr. Howard: This is off the record.

(Remarks off record.)

Q. (By Mr. Hokanson): That was where?

A. At Craig Yard at Long Beach.

Q. (By Mr. Howard): Will you state what you observed as to the condition of the main engine on the occasion of that inspection as referred to with respect to any deficiency or defect that you might have found?

A. I didn't do the work of dismantling the engine. I was [717] leaving the detail of that up to Mr. Cross, our assembly foreman, who was on the vessel and the boys he had working for him. I was not particularly perturbed about how the men were working. I was concerning myself with trying to find out what I could that was basically other than I should like it to be. The only thing that I found was water in the crankcase."

Mr. Hokanson: I move to strike the part of the answer which is not responsive, there at the end.

(Deposition of Sidney W. Newell.)

The Court: Which part? Beginning with what words?

Mr. Hokanson: I will withdraw the objection. I see the question is broad enough to cover it.

"Q. Was there oil in the crankcase at that time?

A. Yes, there was oil in the crankcase, and to find the water I put a syringe in the bottom of the crankcase and would draw up a syringe full of liquid and would get a substantial quantity of oil as well as a substantial quantity of water.

Q. Normally does water rise to the top or is it found on the bottom where it is standing with oil?

A. In a settled tank, water will be on the bottom and oil on the top. [718]

Q. Did you analyze that oil or that mixture that was brought out with the syringe to determine whether the water that you found therein was fresh water or salt water?

A. We only analyzed it by taste and it was salt water."

Mr. Hokanson: I move to strike the answer of the witness as being a conclusion arrived at without proper scientific tests.

The Court: That motion is denied. That question goes to the weight rather than admissibility.

"Q. Are you positive of that from that test?

(Deposition of Sidney W. Newell.)

A. Only as positive as I can tell the difference between fresh water out of a tap and salt water in swimming on the beach.

Q. There was a definite salt water taste to the water? A. Yes, there was.

Q. Did you find anything else unusual or extraordinary about the condition of the engine at that time?

A. Not that I recall at the moment.

Q. You remember whether the lubricating oil cooler or heat exchanger was installed aboard the engine at the time of your inspection? [719]

A. Yes, the lubricating oil cooler was still mounted on the engine.

Q. Do you know whether that lubricating oil cooler had been removed from the engine prior to your arrival aboard and during the period that the tanker was in Long Beach?

A. I do not know from first hand that it was. At any time I ever saw it, it was mounted on the engine.

Q. Did you inspect the tubing or the internal area of the lubricating oil cooler at that time to determine its condition? A. No, I did not.

Q. Did you inspect the tubing running through the cylinders and liners on the main engine of the Urania on that occasion?

A. Only superficially.

Q. Did you find anything out of order?

A. No, I did not.

(Deposition of Sidney W. Newell.)

Q. Were the vertical shaft and gears in place aboard the main engine at that time?

A. I don't recall exactly the status of the work on the gears.

Q. Do you have in your employ a Mr. N. A. Cross? A. Yes, I do.

Q. During October of 1948, was Mr. Cross sent to Manzanillo, Mexico in connection with the repairs of the main engine of that vessel? [720]

A. On October 28th, 1948, the Compania Naviera Limitada telephoned an order which was jotted down as, "Send service man to Manzanillo to check operation. Man to return to Los Angeles with vessel." This was confirmed in a telegram from them of October 28th, 1948. Mr. Cross left Oakland at 7:25 p.m. on October 28th, 1948 to go to Manzanillo to work on the Urania.

Q. And when did he return, please?

A. Mr. Cross returned to Oakland at 9:55 p.m. on November 25th.

Q. Do you know whether Mr. Cross remained with the tanker Urania from the time he left Oakland until he returned to Oakland?

A. It was the only job he had while he was away. Of course, he spent several days in traveling. He didn't live aboard the Urania when the vessel was in Long Beach. The rest of the time he was aboard the Urania, I know because I talked to him nearly every night on the telephone when he was aboard.

(Deposition of Sidney W. Newell.)

Mr. Howard: This is off the record.

(Remarks off record.)

Q. (By Mr. Howard): Did you have occasion to send any spare parts or other equipment for the main engine to either Long Beach or Manzanillo, Mexico at the request of Mr. Cross during that period? [721]

A. Yes. We sent to Mr. Cross in Long Beach new upper and lower vertical shaft gears. I took them down with me to the plane on Friday, November 12th. Other parts of comparatively a minor nature were sent down from time to time of which I have no record here."

Mr. Howard: I would like to have the clerk mark 13 pages of invoices, identified in the deposition as Exhibit P.

The Court: May they all be marked as one exhibit?

Mr. Howard: Yes, your Honor. They are treated that way in the deposition.

(13 pages invoices marked Respondent's Exhibit A-17 for Identification.)

"Q. (By Mr. Howard): Handing you, Mr. Newell, what has been marked for identification as Claimant's and Cross Libelant's Exhibit P, will you tell us what that consists of?

(Deposition of Sidney W. Newell.)

A. There are, as I count them, 13 copies of invoices from The Union Diesel Engine Company.

Q. You mean copies of 13 pages of invoices?

A. Thirteen pages, yes, sir. They all appear to cover parts, services and expenses supplied by us in connection with the engine on the Urania.

Q. Referring again to Exhibit P, can you tell me whether [722] those invoices, as presented by your company, have been paid?

A. I am quite sure that they have been paid.

Q. Does the stamp, "Paid" of The Union Diesel Engine Company appear on each of those invoices, and what date, please?

A. They all are stamped, "Paid, December 7, 1948."

Q. And that is the stamp of your company, is it?

A. That is correct.

Q. Generally will you tell us, Mr. Newell, what parts were furnished under the invoices that are identified as Exhibit P?

A. The principal parts are No. V6-1490, vertical shaft drive gear, V6-1403, vertical shaft lower gear.

Q. When were those supplied, please?

A. They appear as having been shipped with Mr. Cross on October 28th, 1948.

(Deposition of Sidney W. Newell.)

Q. To where?

A. Shipped to MV Urania, Manzanillo, Mexico.

Q. I am not interested in details of that—if you can generally list the rest of them as to what parts were furnished?

A. One invoice covers Mr. Cross' airplane ticket to Mexico City.

Q. Each page has been numbered consecutively. Mr. Newell, will you go back. P-1 covers what items and in what amount? [723]

A. P-1 covers nine items in the amount of $260.85.

Q. Those are parts that were shipped to Manzanillo in care of Mr. Cross when he went down?

A. Yes, sir. Mr. Cross took those parts with him when he went down on October 28th.

Q. What does P-2 cover?

A. P-2 covers airplane ticket to Mexico City, $136.91.

Q. That is for Mr. Cross when he went down there?

A. That is for Mr. Cross' transportation to Mexico City.

Q. And P-3?

A. P-3 is a potrion of the second progress invoice which covers Mr. Cross' services from October 28th to November 11th, inclusive.

Q. That is continued on P-4?

A. And it is continued on P-4. It also covers miscellaneous expenses of Mr. Cross as well as tele-

(Deposition of Sidney W. Newell.)

phone calls by myself. The total amount of the invoices covered on P-3 and P-4 is $644.29.

Q. And P-5?

A. P-5 covers three more gears.

Q. Where were those sent, please?

A. They were sent by air freight to MV Urania and Owners, care of Craig Shipbuilding Company, Long Beach, California, and the amount of the invoice is $282.50.

Q. And P-6?

A. P-6 covers a group of comparatively small parts primarily gaskets and lubricating oil manifold branch pipes which were shipped by air freight on November 17th, 1948 to the Motor Vessel Urania and owners, care of [724] General Steamship Corporation, Limited, 365 West Seventh Street, San Pedro (Notify consignee on arrival).

Q. The amount of that, please?

A. The amount of it was $55.72.

Q. And P-7?

A. P-7 covers six fuel lines from manifold to valves in amount, $54.00. The parts were forwarded by railway express to Compania Naviera Limitada, care of Simpson Spence Young Company, 52 Broadway, New York, New York.

Q. The amount of that was what?

A. The amount of that was $54.00.

Q. Do you know whether the six fuel lines shown on P-7 were actually shipped to New York

(Deposition of Sidney W. Newell.)

or do you know whether those were shipped to the vessel at Long Beach?

A. The invoice indicates they were shipped to New York. I don't recall this particular shipment.

Q. P-8?

A. P-8 and P-9 are parts of the same invoice, and they cover approximately 56 items, in amount, $581.98, which was shipped to the Motor Vessel Urania at Long Beach and it is indicated that they were shipped by service engineer.

Q. And P-10, please?

A. P-10 is an invoice in amount, $361.31, covering four gears which were addressed to Motor Vessel Urania and Owners, care of General Steamship Corporation, Limited, at San Pedro. [725] It is noted that the last item covers lower vertical shaft thrust bearings, which were apparently not forwarded on previous shipment.

Q. That relates back to a previous shipment, does it? A. Yes, apparently it does."

Mr. Howard: Is there any way we could shorten this proof by stipulation as to the admissibility of this group of invoices?

Mr. Hokanson: I believe subsequently in the deposition a question is raised as to the need to furnish certain of these items in connection with the repairs arising out of the breakdown.

Mr. Howard: I propose to offer them on the

(Deposition of Sidney W. Newell.)

basis of this proof, and then in your subsequent interrogation you can cover any questions you have as to some of those items. We might save reading some pages.

The Court: We will take a recess for five minutes.

(Recess.)

The Court: You may proceed.

"Q. Would you look at the last item of page 9?

A. Yes, that is apparently the same item. On P-10 it is noted that this is an adjustment which appears to the same [726] as that on P-9.

Q. Credit was given for a part that was not delivered then? A. That is correct?

Q. P-11?

A. P-11 and P-12 are the third progress invoice. I think that P-11, P-12 and P-13 are the same invoice but the total appears to be on the front page.

Q. The item of $1,153.13 appears on page 11 as a total? A. It appears as a total, yes.

Q. And following that there are five additional items? A. That is correct.

Q. Does the item $441.83 relate to the total of expenses shown and listed on P-12 and P-13?

A. Yes.

Q. Then there are three additional items covering freight charges and telephone calls?

A. That is correct.

(Deposition of Sidney W. Newell.)

Q. Enumerated on P-11?

A. That is correct.

Q. Plus an item of $36.62, covering compensation insurance? A. That is correct.

Q. And what is the total then for those three pages, P-11, P-12 and P-13?

A. The total of those pages is $1,656.24.

Q. Mr. Newell, are the charges shown on page P-11—what are those for?

A. The principal charges except those which we have already discussed are for services of engineers employed by Union [727] Diesel Engine Company on the Urania.

Q. And that includes your time?

A. It includes my time, the time of Mr. Cross from November 12th to November 25th, the time of Mr. Firth, and the time of M. L. Newell.

Q. All working on the main engine of the Urania? A. That is correct.

Q. Are the charges shown on these 13 pages of invoices, identified as Exhibit P, the going market prices for the spare parts and equipment shown thereon?

A. Yes, they are; including services.

Q. And are the charges for services the going rate? A. That is correct, they are.

Q. Those are the normal rates that you charge your customers? A. That is correct.

Q. And do you consider that all of the charges that are included in these 13 pages of invoices are reasonable? A. That is correct, I do.

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Q. And they have all been paid?

A. Yes, they have.

Q. A good many of the parts that were shipped to Long Beach were requested by your service engineer, Mr. Cross, who was down there in order to complete repairs on the vessel?

A. That is correct, most of them were ordered by Mr. Cross.

Q. And all of these invoices are bills to the Compania [728] Naviera Limitada?

A. Yes, they are.

Q. Do you consider all of the time that was employed by your service engineers and yourself as covered by these invoices as necessary to effect the repairs and make the adjustments necessary to this main engine?"

Mr. Hokanson: I object to that, to the question beginning on line 25, page 31, on the ground that the witness has stated he did not supervise the repairs; he was merely there for two days looking to see what he could find was wrong with the engine, and he is therefore not competent to testify as to the necessity of all the items furnished.

The Court: He was so intimately connected with the job; do you make the point that he would have to be present every moment?

Mr. Hokanson: He has testified, your Honor, that he wasn't there to see what work was done.

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He was there for two days merely to find out, if he could what improvements could be made, or what the basic cause for the engine difficulty was.

Mr. Howard: He was vice president of this company, directing the operations, insofar as possible, by telephone and otherwise, radiophone, from his headquarters in [729] Oakland. He has testified he was acquainted with parts, prices on the parts, etc.

The Court: Was the job under his supervision?

Mr. Howard: Yes. As vice president of the company, he was supervising the job.

The Court: This particular job?

Mr. Howard: Yes, your Honor.

Mr. Hokanson: I don't see that the testimony so shows. He states about three pages back that he was there for two days and was not concerned with the actual work that was being done. He states he was there to find out, if he could, what the difficulty was.

The Court: Do you not think that statement made by him, which you interpret as not concerned with the actual work, related to his not being concerned with the details of each workman's work working under Mr. Cross?

Mr. Hokanson: I think subsequently it develops in his testimony that he was not actually aware of everything that was done on the engine.

The Court: I think that the evidence reasonably establishes that this man was the official of The

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Union Diesel Company who had official charge of the doing of this work. This objection is overruled.

"A. Yes, I do."

Mr. Howard: At this time I will offer A-17, consisting of 13 pages of invoices.

Mr. Hokanson: May I reserve my objection to the admissibility of these documents based upon subsequent testimony of the witness with respect to the items contained in those invoices?

The Court: Do you ask the Court to reserve ruling until after those have been read?

Mr. Hokanson: Yes, your Honor.

The Court: That will be done.

"Q. Did you yourself or anyone representing your company remove and preserve any of the parts of the main engine or accessories or auxiliaries of the main engine that may have been replaced during the course of the repairs, either at Manzanillo or Long Beach?

A. Not to the best of my knowledge.

Q. Did you take any photographs of any such parts?

A. I did not and none were taken to the best of my knowledge.

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Q. During the normal operation of this particular Union Diesel engine that was installed on the tanker Urania, can [731] you tell us what the temperature would be shown or maintained on your lubricating oil?

A. Maximum lubricating oil temperature should be approximately 135 degrees Fahrenheit.

Q. Is that indicated in your maintenance manual?

A. Yes, it is on page 30 of the instruction book. It says that lubricating oil temperature into cooler at rated load should be approximately 140 degrees Fahrenheit with the notation added that the readings are subject to slight modification depending on the operating conditions.

Q. And what temperatures would be normal in the water jacket in the cylinders during normal operation?

A. I don't know what the water temperature in the cylinders would be at normal operation.

Q. Is there a gauge on the engine room indicator to show that?

A. We have a maximum water temperature which is indicated on page 30, that the fresh water discharge from the engine at the exhaust manifold at rated load should be 145 to 150 degrees Fahrenheit with a notation added, "Important, should not exceed 160 degrees Fahrenheit." We also have a note of a temperature of 140 to 145 degrees Fahrenheit indicated as the fresh water discharge tem-

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perature from the exhaust valve cages at rated load.

Mr. Hokanson: I object to the last part of [732] the answer as not being responsive to the question."

Mr. Hokanson: My objection there was to the responsiveness of the answer, and I believe I have stipulated there that another question would cover the objection.

The Court: You may proceed.

"Q. (By Mr. Howard): Does your manual indicate what the maximum temperature would be of the fresh water discharge from the exhaust manifold?

Mr. Hokanson: I will stipulate that that has been answered and that the answer will stand to that question, but you asked him the question to which he did not reply, namely, is there a gauge indicating. A. I said no, there was not.

Q. (By Mr. Howard): Do you have a gauge there on the engine room control platform to show the temperature of the water in the jacket between the cylinder and the cylinder liner?

A. No, there is not.

Q. In normal operation of this particular main engine, does the manufacturer recommend that any

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additional pumps be [733] placed in operation to increase the pressure and circulation of salt water through the heat exchangers?

A. No. As far as the engine is concerned, we supplied only the main engine itself to specifications.

Q. Do you consider such a practice to be good operational procedure? A. Yes, I do.

Q. Why?

A. I don't understand your question.

Q. May I restate the question, please? Do you consider the practice of hooking up an additional pump, a standby pump, to increase the pressure of the salt water and the circulation of salt water through the heat exchanger or lubricating oil cooler to be good operational procedure?

A. A standby circulating water pump is considered good normal marine practice.

Q. Why would that be necessary?

A. The engine driven pumps might fail.

Q. Assuming that there was no failure of the engine driven pump, would there be any occasion to hook up a standby pump to increase the pressure of salt water through the lubricating oil cooler?

A. There would be occasion to increase the pressure on the salt water system if you were unable to get adequate cooling from the engine driven pumps.

Q. From your experience in the operation of this particular model of Union Diesel engine, do

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you consider that the [734] difference in temperature of sea water that might be encountered in various areas would on any occasion necessitate the use of an additional standby pump to increase the pressure of water in the lubricating oil cooler or heat exchanger?

A. Anything might happen.

Q. In your experience, has such a practice been adopted?

A. Would you repeat that question, please?

Q. In your experience, has such a practice been adopted?

Mr. Hokanson: I object to the form of the question on the ground you don't state what that experience is."

Mr. Hokanson: My objection is repeated, your Honor.

The Court: Overruled.

"Mr. Howard: I am referring back to the previous question and answer that he has given. It is all on the same subject.

Mr. Hokanson: My objection still stands. What that experience related to has not been developed in the examination of the witness.

Q. (By Mr. Howard): You can answer the question.

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A. I am sorry, I don't understand your question well [735] enough to be able to answer it.

Q. Do you have any personal knowledge as to whether a standby fire pump was employed on the tanker Urania prior to the breakdown necessitating repairs at Manzanillo and Los Angeles?

A. No, I haven't. I haven't been on the vessel between the time of the trials at Portland in 1943 and the time I was aboard the vessel in Long Beach in 1948.

Mr. Howard: Mr. Notary Public, I would like to identify this letter as Claimant and Cross-libelant's Exhibit Q, dated January 21st, 1949, consisting of two pages.

(Notary Public marks Exhibit Q.)"

Mr. Howard: Will you please mark this exhibit?

(1-21-49 letter marked Respondent's Exhibit A-18 for Identification.)

"Q. (By Mr. Howard): Mr. Newell, handing you Exhibit Q, can you tell us what that is, please?

A. That is a letter which I wrote on January 21st, 1949, addressed to Merrit, Summers & Bucey, Central Building, Seattle, Washington. It is entitled, Difficulties encountered with main propulsion engine in Panamanian Tanker Urania. [736]

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Q. And that letter was written at whose request, if you know? A. I don't recall.

Q. What is contained in that letter?

A. In this letter?"

Mr. Hokanson: I will withdraw the objection I made at this point, which relates to the document speaking for itself.

The Court: Apparently the question, which is not in very good form, tends to inquire as to the nature of the contents, the kind of subject matter. Is not that really what is intended by the question?

Mr. Howard: I think we can go ahead with line 14.

The Court: You may proceed.

"Q. (By Mr. Howard): What does the letter deal with?

A. The letter deals with difficulties encountered with main propulsion engine in Panamanian Tanker Urania.

Q. And do the statements contained in the letter represent your views as to the nature and cause of the breakdown of the main engine?

A. In the letter I advised, "That our examination of the distressed main propulsion Diesel engine in the Urania [737] indicates that the following were the basic causes for troubles encountered in

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late October, 1948." Then I proceed to give the two basic things.

Q. What are those two basic things, without reading the entire letter? Can you summarize it for us?

A. First of all, there appeared to be leakage around the terminals which lead lubricating oil from special cylinder lubricator into the cylinder liners and pistons. The second trouble was, heat exchangers were leaking and found to be quite dirty.

Q. And this report in this letter, Exhibit Q, was based on your personal inspection?

A. No, that report was in the name of The Union Diesel Engine Company and it was my synopsis of the reports that I had gotten from the men who worked on it as well as from my observation.

Q. A combination of your own observations and reports of your service engineers?

A. That is correct."

Mr. Howard: At this point I would like to offer Identification A-18.

Mr. Hokanson: I object to the admissibility of the document on the ground that it is based on hearsay.

The Court: The witness was there. His deposition [738] was being taken. Within what principle it is admissible? You are inquiring of him as to

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the points covered by the letter and he stated them, did he not?

Mr. Howard: That is correct, but I was relying on the document being offered to show what the witness stated as of a certain date as to the cause of the engine breakdown.

The Court: The date the litigation arose?

Mr. Howard: This witness is not a party to the litigation. I submit it is a report he has made on the basis of information obtained in the usual course of business.

The Court: But the report is not made in the usual course of business; it is an extraordinary report, is it not?

Mr. Howard: That is correct. The opposite side had an opportunity in this deposition to cross-examine the witness as to the contents of the exhibit.

Mr. Hokanson: My objection stands, your Honor.

The Court: The objection is sustained.

"Q. Mr. Newell, I believe you were served with a subpoena duces tecum to produce documents for the purpose of this deposition. Can you tell us what documents you have brought [739] with you for the deposition?

A. I brought the instruction book that we have already spoken of. I also brought a drawing which

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is merely a print of the master of figure 20 which appears on page 59 of the instruction book.

Q. And did you give a print of this drawing to either party to this action?

A. A print of that figure 20 was given to two men whose names I do not recall who represented themselves to be representatives of Commercial Ship Repair.

Q. Was a copy of that print given to anyone representing the owners?

A. I believe not. I wouldn't want to be sure of that. I don't believe there was though.

Q. Is that print that you have produced here today a spare print? A. Yes, it is.

Mr. Howard: This is off the record.

(Remarks off record.)

Mr. Howard: I would like the Notary Public to mark this as Claimant and Cross-libelant's Exhibit R.

(Notary Public marks Exhibit R.)

Q. (By Mr. Howard): This exhibit which has been marked Claimant and Cross-libelant's Exhibit R is the print that you have just previously referred to? [740] A. That is correct.

Q. And it shows at the bottom, "Figure 20-Side elevation of engine?" A. That is correct.

Q. And that refers to this engine as installed on the Diesel Tanker Urania?

A. That is correct.

Q. Have you produced any other documents to-

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day, Mr. Newell? A. No, I haven't.

Q. Have you furnished any other information to any party to this cause concerning the main engine of the Tanker Urania?

A. Would you repeat that question, please?

Mr. Howard: Read the question.

(Question read by reporter.)

A. There has been information given to a number of parties who have represented themselves as being interested in the main engine in the Urania. I couldn't recall all of the details of everything that was given to everyone.

Q. Recently?

A. No, no information has been given recently with the exception of the figure 20, which we were just talking about.

Q. At the time that figure 20, Exhibit R, a copy of that was given to a representative of Commercial Ship Repair, did you discuss the difficulties with the main engine with those persons?

A. No, we did not discuss the difficulties.

Q. Is Mr. Cross available in Oakland or Berkeley at the [741] present time?

A. No, he is not.

Q. Where is he at the present time?

A. He is in New Orleans, Louisiana.

Q. When do you expect him back?

A. We hope that he will be back by the 2nd of April.

Q. Mr. Newell, I am going to ask you a rather

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long question which will be repeated back to you if you miss any part of it. Will you assume, Mr. Newell, that former United States Navy Tanker YO-73, now known as Motor Vessel Urania, with which you are familiar by reason of having supplied and participated in the installation of the main engine at the Albina Machine Works in Portland in 1943; this vessel was purchased, assume, by its present owners in 1948, and in August, 1948 the Urania was taken to a repair yard on Puget Sound, Washington for a general overhaul and repair before the tanker was placed in commercial operation; assume that the owner's specifications to the repair yard for work on the Union Diesel main engine model V6, 560 horsepower, included the following work to be accomplished in the ship repair yard among other things, A, furnish labor and material to pull main engine cylinder liners; B, clean and wrap liners and store in warehouse; C, install six new cylinders in engine; D, install new liners in five cylinders; E, furnish services of factory representative to supervise operation of Diesel engine; F, furnish labor and material to repair circulating [742] system of main engine as necessary; assume that the above work was undertaken by the repair yard during the course of which the entire lubricating oil cooler or the heat exchanger system was removed from the engine room of the vessel and taken to the repair yard shops ashore for cleaning, repair and adjustment and that this piece

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of equipment was thereafter reinstalled aboard the vessel; assume that new cylinders were installed in the engine by mechanics from the repair yard who also reinstalled the liners within the cylinders and hooked up the lubricating oil tubing terminals to the cylinders and liners; assume that the engine performed satisfactorily on sea trial but thereafter developed a severe knocking and unevenness while the vessel was under way off the West Coast of Mexico; assume that prior to this difficulty the engine had been operated at from 290 to 300 revolutions per minute and that during this period of operation the lubricating oil pressure had been maintained at 18 pounds per square inch; assume that during this time the outside sea water temperatures ranged from 55 degrees to 80 degrees Fahrenheit and that the water temperature in the outer jacket of the cylinders ranged from 120 degrees Fahrenheit to 137 degrees Fahrenheit; assume also that all normal and standard maintenance and operational procedures were adhered to and followed by the engineers on duty; assume that no additional pumps were hooked up to increase [743] the pressure on the salt water in the heat exchangers or to increase the circulation of water through the heat exchangers; assume that upon stopping and opening up the engine it was found that the lower vertical gears of the main engine were badly galled and the upper vertical gears were slightly galled; assume that it was also discovered that the ter-

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minals leading the lubricating oil from a special cylinder lubricator to the cylinder and water jacket openings into the rubbing surfaces at the cylinder and liner were not tight, at least on some cylinders; assume that after a second breakdown it was also discovered that the tubing in the heat exchanger was leaking badly and that the tubing was quite dirty causing the lubricating oil to become contaminated with salt water as found in samples later taken from the bottom of the crankcase; Mr. Newell, assuming all of the above facts and conditions to have existed and based upon your experience and personal knowledge of the construction, installation and performance of that type and model Union Diesel engine, please state your opinion as to the nature of the breakdown?"

Mr. Hokanson: I object to the question on the ground that certain assumptions are included therein which have not been established in the evidence, such [744] as on page 40, line 13, the assumption that the lubricating oil terminals were hooked up by the repair yard, and the assumption at the top of the page involving independent work by the repair yard on the main engine.

Mr. Howard: On page 41?

Mr. Hokanson: No, at the top of page 40. The assumptions begin at the top of page 40 relating to services.

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The Court: Is it possible that you are confusing pages 40 and 41? I see that the "hooked up" expression appears at the top of page 41. I do not see the "hooked up" expression on page 40 at the top of the page.

Mr. Hokanson: To rephrase the objection, the assumptions commencing at line 1 on page 40; install new cylinders, install new cylinder liners, furnish services of factory representative, furnish labor and material to repair circulating system of main engine as necessary—that assumption is based upon the further assertion that the repairs were made by the yard. The testimony here is that they were done at the direction and under the supervision of the chief engineer.

Then on line 13 there is the further assumption that the yard hooked up the lubricating oil tubing terminals [745] to the cylinders and liners. There is no testimony in the record to establish that.

Many of the assumptions here are presumably such as they will attempt to establish by the evidence later on, but by his own testimony, Mr. Williams has already established that some of those assumptions are incorrect.

On lines 12 and 13, page 41, there is the assumption that the tubing in the heat exchanger was leaking badly and that the tubing was quite dirty. There are additional assumptions which are not borne out by the evidence to date, and will not be borne out by their own witnesses.

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The Court: Is there any chance that any of these conditions stated in the suppositious question will be established by further testimony later to be adduced?

Mr. Howard: May it please the Court, the last objection that counsel made as to the tubing in the heat exchanger leaking badly, we will offer considerable testimony as to that. I can cover the others also at the same time.

As to the objection starting on line 1, page 40, those items as shown in the hypothetical question are taken directly from Libelants' Exhibit 4, being the Job Order 678 for additional work, and line 13—— [746]

The Court: Is the condition in accordance with the condition therein stated in such job order?

Mr. Howard: I took the exact language out of Libelants' Exhibit 4. Any contention as to the work being performed under the direction of the chief engineer seems to me to be unimportant when their own job order says that they were to do certain work, and I have used the language of their own job order in that respect. It may be true that certain work was directed by the chief engineer, but where the job order itself says the yard is to do certain work and I have used that language in my hypothetical question, it seems to me I have adequately covered it.

Mr. Hokanson: The respondent's own witness, Mr. Williams, their representative on this job, has

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testified that the job order which Mr. Howard has referred to, 678, Libelants' Exhibit 4, represents a summary of work done. He testified at least on two occasions that all work on the main engine was done expressly on the understanding that it was under the supervision of the chief engineer.

The mere phraseology of the particular shop orders listed there is not controlling with respect to how that work was actually accomplished. I think the testimony bears that out. That is why I object to the [747] assumptions contained in this hypothetical question.

The Court: The point just stated in the objection does not make inadmissible a supposititious question, in my opinion. As to whether or not the chief engineer may have been guilty of some oversight is another question not going into the one as to admissibility of this supposititious question. The objection is overruled.

As to what the further proof will be, you have already mentioned it, Mr. Howard, but speak more certainly at this point as to that.

Mr. Howard: I will advise the Court at this time that we will offer by deposition the testimony of witnesses at Long Beach or Los Angeles, one witness representing the Union Diesel Engine Company who himself personally supervised the removal of the lubricating oil cooler to a radiator repair shop where he attended during the course of the testing of the cooler and testified as to the

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extent of the leaks found in the cooler.

We will also offer testimony by deposition of the man who actually made the test on the cooler, who was employed by the radiator repair shop, and will testify as to the extent and number of leaks that were found in this lubricating oil cooler and in the two water coolers. [748]

The Court: That answers my inquiry, if that is the only remaining detail of work which is involved in the objection stated by Mr. Hokanson. Will you, Mr. Hokanson, stated in this connection whether there is anything else to which your objection goes other than that?

Mr. Hokanson: Your Honor, I will limit my objection to that particular point now with respect to the tubing. Mr. Howard has not stated accurately what his evidence will show with respect to the condition of the heat exchangers. Their own witnesses all agree that there were no leaks in the tubing of these heat exchangers, and that is an assumption contained in the hypothetical question beginning at line 12, page 41.

The Court: Was there a leak somewhere else in the exchanger?

Mr. Hokanson: There is testimony to the effect that there were leaks at other points.

The Court: In the heat exchangers?

Mr. Hokanson: Yes, your Honor.

Mr. Howard: I might address the Court very briefly on that. I think there is variable testimony

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of the witnesses as to the point—the source of the leak in the heat exchangers, as to just where it was found in the heat exchangers. [749]

The Court: The Court will overrule the objection, in view of the promise stated. I will say in that connection that counsel propounding the supposititious question guarantees that the conditions stated in the question will be substantially met in the scope of the evidence, and that if it is not so met and if the failure goes to the meat of the matter, then the question and the answer fail. If the failure is one of degree or weight rather than essential condition, then the Court as the trier of the fact depreciates the weight of the evidence adduced by the question and answer accordingly.

The objection is overruled upon that promise.

"A. The gearing was worn out.

Q. What gearing are you referring to, please?

A. The gears which you mentioned were galled.

Q. They would be the upper and lower vertical gears? A. That is correct.

Q. Please state your opinion as to the cause of the breakdown, that is, the cause of the gears wearing out.

A. We assumed that we found water in the lubricating oil, we found sea water or salt water in the lubricating oil, that is one of the basic assumptions? [750]

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Q. Yes. That was the last assumption, Mr. Newell, would you like to have it read to you again?

A. If you would, please.

Q. This is the last part of the question: Assume that after a second breakdown, it was also discovered that the tubing in the heat exchangers was leading badly and that the tubing was quite dirty, causing the lubricating oil to become contaminated with salt water as found in samples later taken from the bottom of the crankcase. My question to you was, will you please state your opinion as to the cause of the breakdown.

Mr. Hokanson: You indicated two breakdowns. Would you in your questions specify which breakdown?''

Mr. Hokanson: My objection is the same.

The Court: Overruled.

''Q. (By Mr. Howard): As to the cause of the first breakdown of the engine.

A. You will have to give it to me again, please, the assumptions that we had made up to the time of the first breakdown.

Mr. Howard: Well, this is off the record. [751]

(Remarks off the record.)

Q. (By Mr. Howard): Is the question clear to you now?

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A. No, it is not, sir. I do not understand what assumptions we made up to the point where you asked me what my opinion was as to the cause of the troubles that were encountered at that time.

Q. Is there any particular assumption that you don't understand or do you want the entire thing read again?

A. I do not understand what you mean by the joints or connections were not tight.

Q. I will amend my question on that by referring you to your letter of January 21, constituting Claimant's and Cross-Libelant's Exhibit Q in the first numbered paragraph of which you stated:

"1. Terminals which lead lubricating oil from special cylinder lubricator through the cylinder and jacket water openings and into the rubbing surface of the cylinder and liners were not tight as was particularly noticed on #2 cylinder." "

The Court: The objection continues, as I understand it, and the evidence is not in yet, by the mention of the letter before the Court and before the witness. Was that evidence or will that evidence in some other [752] way be properly admitted?

Mr. Howard: If the Court please, we have a situation here where the witness has previously identified a letter of a certain date which we have had identified and we have offered in evidence. There was no way then of anticipating the Court's

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ruling on an objection to it which was not stated at the time.

When the witness comes along with this point in his testimony, he is uncertain as to certain points and in order to clarify that in his mind so that he can answer the question I have, in amplifying the question, quoted from the letter which he had written which is now Identification A-18. I will offer no other evidence on it, but it seems to me it is entirely proper to refresh the witness' memory as to a certain report he made by quoting to him from that report.

The Court: Was there any cross-examination as to that detail? The fact that the letter was identified before the examiner and the witness at the time afforded the opportunity to the opposing counsel to cross-examine with reference to it, did it not?

Mr. Hokanson: That is right, Your Honor.

The Court: Did you wish to make any other observation, Mr. Hokanson?

Mr. Hokanson: Whether this is extracted from the [753] letter which now has been rejected or not, I suppose it is a proper assumption to include in the question if counsel will establish through other sources the facts which he includes in the assumption.

The Court: Whether this fact stated in the letter is established otherwise or not, it was used by the witness for the purpose of refreshing the witness' recollection, as I understand it, and that is per-

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missible even though the document, the exhibit is not in evidence and did not later become so.

The objection is overruled.

"A. In that letter I was referring to the water tightness of the terminals. If the terminals are not tight, it is possible for salt water to leak through—pardon me, it is possible for fresh water to leak through from the space between the liner and the cylinder by the gasket which seals the terminal, then down the liner wall by the piston and into the crankcase, and in that way contaminating the lubricating oil by the addition of fresh water."

Mr. Hokanson: That is not responsive, Your Honor.

The Court: That answer will be stricken. It is not proper for the witness to testify into the record what [754] he meant in the letter. All he can do with that letter is to refresh his present recollection. He has to state his recollection of what the fact is independent of the letter. He keeps on referring to this letter. This letter and its contents cannot be brought into the record over the objection.

"Q. I refer back now, Mr. Newell, to my question to you, to please state your opinion as to the cause of the breakdown based upon the assumptions

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in the extended question previously propounded to you. Do you understand?

A. I thought that I had answered it in my previous statement.

Q. Would you mind repeating you answer, please.

A. I believe that if the terminals on the cylinders which I mentioned in my letter of January 21st, were not tight, it would then be possible for fresh water to get into the lubricating oil on the engine and cause the unsatisfactory operation of the gears.

Q. Does this answer which you have given take into consideration all of the other assumptions included in the extended question which I gave you?

A. To the best of my understanding, it would.

Q. Then I now understand you to express the opinion that the cause of the breakdown on the tanker Uránia was the leaking of fresh water through a loose terminal on the cylinder liner permitting such fresh water to go down past the piston into the crankcase? A. That is correct.

Q. Do you consider that the cause of the breakdown involving the upper and lower vertical gears on the main engine of the tanker Urania was contributed to by the condition of the heat exchanger as described in my assumptions propounded in the extended question?"

The Court: I would like to know if the objection

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which is continuing goes to the answer on line 10, concluded on line 14, page 44 (lines 17-21, page 755 of reporter's transcript).

Mr. Hokanson: It does.

Mr. Howard: If the Court please, as to that answer the witness only referred back after having refreshed his recollection from that letter, and I think his answer is independent of the statements in the letter.

The Court: It may be, but there is doubt in the Court's mind about it, and it is not made clear. The [756] Court will strike it and sustain the objection to it. However, there remains in evidence the question and answer beginning at line 19, page 44 (lines 2-7, page 756 of reporter's transcript).

Mr. Hokanson: That involves——

The Court: It may do it; it also may not. I understand it to call for his present opinion, and that is not conditioned upon his reciting in the record the facts stated in the letter. It refreshes his recollection, but there is not in evidence before this Court at this time the contents of that letter, and that is the meaning of the Court's rulings up to this time, to see to it where objection is made that the contents of that letter are not in evidence.

Mr. Hokanson: Your Honor, the question beginning at line 19, page 44, involves an assumption by the interrogator which has not been established by the assumptions contained in the previous hypothetical question, nor by the answers which have

(Deposition of Sidney W. Newell.)

already been stricken by the Court's order, and therefore the question is improper.

Mr. Howard: If the Court please, as to that item I can now advise the Court that we will by other witnesses whose depositions have been taken establish that a loose terminal was found on the cylinder liner when the vessel arrived at Los Angeles and was inspected. [757]

The Court: Whether it was a tubing or something else?

Mr. Howard: A loose terminal on the cylinder liner.

The Court: Is that something different from a tubing in the heat exchanger?

Mr. Howard: Yes, Your Honor, it is different. That is not part of the heat exchanger.

The Court: Subject to what I have said about the letter and its contents, which is not changed in the Court's remark about to be made, the Court overrules the objection to the supposititious question and permits the answer to stand, subject to the conditions which the Court has mentioned previously.

"Q. (By Mr. Howard): Will you please state your opinion as to the nature of the second breakdown of the main engine on the tanker Urania, based upon the same assumptions as propounded in the extended question?

(Deposition of Sidney W. Newell.)

A. We assumed, in the extended question, that the main engine on the tanker Urania had a leaky lubricating oil cooler, we assumed that the pressure of the salt water had been increased for one reason or another——

Q. Excuse me, I think the assumption was just the opposite. [758] May I read that part back to you?

A. Go ahead, I am trying to get it clear.

Q. One assumption in my question to you was that no additional pumps were hooked up to increase the pressure of salt water in the heat exchanger or to increase the circulation of water.

A. We did, however, assume that the lubricating oil cooler had sprung tubing, leaky tubes?

Q. Yes.

A. Then, assuming that we have a leaky cooler and we have normal operating sea water pressure, I do not believe that those two factors would go together to cause the troubles we have discussed.

Q. In your opinion, Mr. Newell, did the leaky tubes on the heat exchanger have any bearing upon the galling of the vertical gears, upper and lower, on the main engine of the tanker Urania on the second breakdown?

A. Not based upon the assumptions which we have made.

Q. Eliminating the assumption that the terminals leading the lubricating oil into the cylinder liners and cylinders were loose, would you then

(Deposition of Sidney W. Newell.)

express an opinion as to whether the leaky tubing in the heat exchanger would have a bearing on the second breakdown of the main engine?

A. We are assuming now that those terminals were not leaking water? [759]

Q. That they were tight.

A. If they were tight, then I do not believe that any of the assumptions that we have made would lead to the unsatisfactory performance of the gears.

Q. Would you express an opinion, please, as to the source of the salt water which you found in the bottom of the crankcase when you took a sample by syringe at Long Beach after the arrival of the tanker at that point.

Mr. Hokanson: I object to the question on the ground that he is asking for the opinion of an expert, the answer to which must be based on facts and not opinions."

Mr. Hokanson: My objection is repeated. Your Honor.

Mr. Howard: This witness has qualified himself. He is a graduate engineer and vice president of The Union Diesel Engine Company, and he has also testified as to a personal inspection and test he made by withdrawing samples of lubricating oil from the base of this engine at Long Beach when he arrived there. I think he is qualified. [760]

(Deposition of Sidney W. Newell.)

"Q. (By Mr. Howard): Did you determine the source of the salt water which you found in the bottom of the crankcase when you sampled the contents after the arrival of the tanker Urania at Los Angeles?

A. I did not determine the source.

Q. Will you express an opinion as to the source of that salt water?

Mr. Hokanson: The same objection."

The Court: If he did not determine it when he made a personal inspection, is it competent for him to determine it now?

Mr. Howard: He can express an opinion as to the source, although he may not have actually located the source.

Mr. Hokanson: We are dealing with facts here, not opinions. This is a basic fact in this case, and any witness or any expert can speculate over a wide range of possibilities on a matter of this type.

Mr. Howard: Expert witnesses, if the Court please, are required to express opinions when they cannot actually state what the fact was.

The Court: The objection is overruled. [761]

"A. I believe that the salt water found its way into the lubricating oil through the lubricating oil cooler.

Mr. Howard: That is all. You may cross-examine.

No. 12322

United States
Court of Appeals
For the Ninth Circuit.

COMPANIA NAVIERA LIMITADA, a Corporation, Claimant of the Motor Tanker "URANIA," Her Engines, Tackle, Apparel, Furniture and Equipment,

Appellant,

vs.

E. A. BLACK and J. J. FEATHERSTONE, Co-partners doing business under the name and style of Commercial Ship Repair,

Appellee.

Apostles on Appeal
In Four Volumes
Volume III
(Pages 935 to 1350)

Appeal from the United States District Court
Western District of Washington,
Northern Division.

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CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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(Deposition of Sidney W. Newell.)

Cross-Examination

By Mr. Hokanson:

Q. Mr. Newell, you have identified Claimant and Cross-Libelant's Exhibit O, Instruction Manual, as the manual put out by your company for use in connection with vessels propelled by Union Diesel engines, and you have stated that this exhibit is for use on the ex-navy tanker YO-73, is that correct?

A. That is correct.

Q. Should an engineer make reference to this manual in the operation of your diesel engines?

A. He should.

Q. And if he cannot read English, that manual would be of no help to him, is that correct?

A. Well, not strictly.

Q. Would you elaborate on your answer?

A. There are drawings, diagrams and charts which are, I believe, readily understandable by most engineers in most civilized countries of the world where the exact meanings or names of words don't have too great a bearing. For example, I can speak no German but I can look at German drawings and understand their intent and duplicate their [762] parts and in many ways get information of value to me though I can speak no German.

Q. With respect to the analyses of diagrams and so on, no difficulty would be encountered by an engineer who did not speak English, but he would be unable to read the legends, and I ask you whether

(Deposition of Sidney W. Newell.)

it would have been of any assistance to him where in the manual speaks at length of operating procedures?

A. Where it speaks at length of operating procedures would be of little or no value to him.

Q. Now, you earlier testified that the operating pressure on the lubricating oil side of the heat exchanger or cooler is indicated at about 20 pounds per square inch?

A. I believe about 18 pounds per square inch was the figure.

Q. I have reference now to your manual which says 20 pounds as I took it down, and which indicates the operating pressure upon the salt water side of the lubricating oil cooler at seven pounds, is that correct? A. That is correct.

Q. And unless you increase the pressure on the salt water side so that it exceeds the pressure on the lubricating oil side, you can't get any salt water into the lubricating oil, is that correct? Assuming that there are leaks in the cooler?

A. I will state that I can't be certain in minute detail as to the pressures which will exist throughout a complicated [763] structure as a diesel engine in its entirety or in a lubricating oil cooler specifically. In other words, we measure on an engine of that type lubricating oil pressures and or all water pressures at only one or two fixed arbitrary locations. We cannot plot a curve of pressures in all places throughout a structure of tha ttype. Maybe

(Deposition of Sidney W. Newell.)

we could but we don't do it as a normal practice, so I cannot give you a specific answer as to what will happen with the two registered pressures.

Q. My question now is, if there were leaks in this cooler, could salt water get into the lubricating oil if the salt water pressure were less than the lubricating oil pressure?"

Mr. Howard: I object that it is repetitious.

The Court: The objection is overruled.

"Q. What is your answer?

A. It cannot get to a high pressure lubricating oil zone through a comparatively small opening from a low pressure salt water zone.

Q. What is the name of the manufacturer of the lubricating [764] oil cooler which was installed on the Urania?

A. The lubricating oil cooler was manufactured by Harrison Radiator Division of General Motors Corporation in Lockport, New York.

Q. And what is the type of that lubricating oil cooler?

A. The lubricating oil cooler is identified as Harrison Model HE-1120-360.

Mr. Hokanson: This is off the record.

(Remarks off the record.)

Q. (By Mr. Hokanson): What is the type and manufacturer's name of the fresh water coolers on the Urania?

(Deposition of Sidney W. Newell.)

A. The freshwater coolers were manufactured by the same Harrison Radiator Division of General Motors Corporation in Lockport, New York, and are identified as Harrison Model HE-2120-353.

Q. How big are those coolers in outside dimensions, roughly?

A. In general, both the fresh water coolers and the lubricating oil cooler are 18 to 24 inches long, approximately 15 to 18 inches high and approximately 8 to 10 inches thick. The manufacturer quotes a dry weight of 147 pounds for each one of them.

Q. Now, you state that you tested some oil that you found in the crankcase of the Urania on November 13 to determine whether it was contaminated with water, by the use of a syringe; and the only way that you made your conclusion that [765] it was contaminated was by the taste of the oil, is that correct?

A. Well, we could see that that which we got from the bed or sump of the engine was not homogenous, namely, by putting it in a glass tumbler we would get a portion of one fluid on the bottom and another fluid on the top after we had let it settle for a minute or two.

Q. Did you do that? A. Yes, I did that.

Q. What was the percentage of water, do you know?

Mr. Howard: I object to that. He hasn't even stated that it was water. He said it was a fluid."

(Deposition of Sidney W. Newell.)

Hr. Howard: I will waive the objection.

"Q. (By Mr. Hokanson): What was the percentage of other type of fluid than oil, if you know?

A. In taking various samples in this crude syringe manner, the percentage ratio would be quite variable. There would be substantially one fluid one time and it would be the other fluid on the next sample we would take only a minute or two later.

Q. Did you examine the lubricating oil cooler?

A. I didn't except superficially, externally. [766]

Q. Did you examine the fresh water cooler?

A. I did not, except in the same manner.

Q. You don't know of your own knowledge that there were leaks in the coolers then?

A. I do not.

Q. Did anyone in your employ inspect the coolers?

Q. (By Mr. Howard): If you know.

A. I have the word of Mr. Cross"——

Mr. Howard: I object to that as a hearsay statement.

The Court: This witness had a right in the course of his business to depend on Mr. Cross' report to him.

Mr. Howard: I will withdraw my objection.

(Deposition of Sidney W. Newell.)

The Court: The objection is overruled.

"A. I have the word of Mr. Cross of whom we have already spoken and Mr. M. L. Newell, that Mr. M. L. Newell went with the lubricating oil cooler when it was taken to a repair shop which I looked up for them and he witnessed the examination and the work that was done on the cooler, so I would say that he examined the cooler. Is that what you asked me?

Q. (By Mr. Hokanson): I asked you whether anyone in [767] your employ did.

A. I would say that he examined the cooler though he might not have done the actual work. Incidentally, on the examination—he witnessed the examination.

Q. When you looked at the engine, did it have the auxiliary fire pump connected to the cooler?

Mr. Howard: To what cooler, Counsel?

Q. (By Mr. Hokanson): To the lubricating oil cooler.

A. To the best of my knowledge, there had been an auxiliary pump connected to the piping which leads to the cooler and has been ever since the vessel was first seen by me in 1943.

Q. Did that manually operated deliver extra pressure to all three coolers?

Mr. Howard: Will you read the question?

(Question read by the reporter.)

(Deposition of Sidney W. Newell.)

A. I am not acquainted with the characteristics of that auxiliary pump.

Q. (By Mr. Hokanson): Do you know from your examination whether it was so connected that it would deliver pressure to one or more of them?

A. I don't know that it was connected so that it would deliver pressure to one or all of them."

Mr. Howard: On page 53, starting with line 8, the [768] next question would be objectionable on the basis of the Court's previous ruling referring to this letter which has been offered and the objection sustained to it.

Mr. Hokanson: This line of testimony, that this testimony is based on someone else's report to him, in view of the Court's ruling, there is no need to include it here.

The Court: How far does that extend?

Mr. Hokanson: To line 9, page 54.

The Court: At that point we will resume the reading this afternoon.

Court is recessed until 1:30.

(At 12:05 p.m., Tuesday, April 12, 1949, proceedings recessed until 1:30 o'clock p.m., Tuesday, April 12, 1949.)

April 12, 1949, 1:30 o'clock p.m.

"Q. (By Mr. Hokanson): Assume, Mr. Newell, that the lubricating oil cooler was clean and hydrostatically tested for leaks before the Urania left

(Deposition of Sidney W. Newell.)

Seattle, and assume that pursant to those tests no leaks were found, and assume further that this vessel was under way on a voyage of roughly 2,400 miles over a period of ten or eleven days, in your opinion would it be possible for the cooler to get dirty and clogged during that period?

A. The voyage was from Seattle to Manzanillo by what we would normally classify as a direct route. Is that what we are assuming?

Q. That is what we are assuming.

A. With that assumption it isn't reasonable to assume that the coolers could have become dirty in that length of time or length of voyage.

Q. But it is possible that they might have become dirty?

A. I have never heard of it happening. I would assume that anything is possible, yes, but I have never heard of that happening.

Q. Isn't it true, Mr. Newell, that a cooler of this type sucking in sea water and that extraneous matter gets into it as a matter of course requiring periodic cleaning?

A. The sea strainer with which the YO-73 is built is or was of such degree of fineness as to prevent any extraneous matter coming in with the sea water that would be large [770] enough to readily or promptly clog the cooler. It is true that a cooler as well as any other part of an engine needs to be periodically cleaned. We provide, or on installation there is provided equipment to pre-

(Deposition of Sidney W. Newell.)

vent the necessity of very frequent shutdowns. That is particularly true on marine engines where you can't afford to shut down.

Q. When coolers do get dirty, where does the dirt come from?

A. Most of the dirt that a lubricating oil cooler collects is on the lubricating oil side. It will come on the salt water side by protracted periods of operation where salt water can lie idle in the cooler and the salt water becomes so hot that a form of scale generally referred to as boiler scale will deposit on the tubes or fins or cooling members.

Q. The metal of which the fins or radiators within the cooler are made, are subject to corrosive action of sea water, is it not?

A. Yes, it is subject to the corrosive action of the sea water.

Q. Assuming that this cooler had lain idle for six months or more prior to its cleaning and that upon its cleaning it proved to be free of leaks under water pressure tests, in your opinion would the delivery of a 100 pound water pressure per square inch by use of an auxiliary pump cause leaks?"

Mr. Howard: I object to that question, the [771] assumption that the vessel had lain idle for six months. There is no proof in the record of that.

Mr. Hokanson: I have no reply to make. Mr.

(Deposition of Sidney W. Newell.)

Howard objects; I am willing to withdraw the question.

The Court: The objection is sustained.

"Q. Do you know of your own knowledge the kind of metal of which the cooler was constructed?

A. Only to this extent, they were Navy Department specification coolers. The coolers, on this name plate, and I am not certain elsewhere or not, were stamped with the mark of the Navy Department inspector in Lockport, New York, who inspected the coolers after they were manufactured. I did not analyze the material of the tubes or any other material [772] in connection with the cooler.

Q. Then you don't know of your own knowledge what the material was? A. No, sir."

The Court: On line 17, page 57, do you wish to eliminate that? You have objected to it previously.

Mr. Hokanson: I am willing that that be stricken, Your Honor.

The Court: From line 17, page 57, down to where?

Mr. Hokanson: Down to line 18, page 58.

The Court: Is there any objection?

Mr. Howard: No objection.

The Court: That is stricken down to that point. You may proceed.

(Deposition of Sidney W. Newell.)

"Q. Now, if we assume that the lubricating oil was contaminated with some other fluid, salt water or fresh water, as the case may be, to the extent that you found in the crankcase on November 12th, are there any gauges on the engine which would reflect that condition?

A. What kind of water, you said either fresh or salt water?

Q. That is right, it appears from your testimony or what has gone on before here, that both fresh water and salt water [773] conceivably could have gotten into the lubricating oil.

A. The only gauges that might lead an operating engineer to know that water had gotten into his lubricating oil are rather indirect gauges. For example, there is normally a gauge on the fresh water surge tank which indicates the amount of surplus fresh water in the system. That varies from time to time and the purpose of that gauge is to indicate that the fresh water has left the surge tank. Where it has gone no one knows. There are many places where it could go. Similarly on the lubricating oil day tank, there are gauges or measuring devices of one sort or another which enables the operating engineer to have some indication as to the height of the fluid in his lubricating oil day tank. He, of course, cannot know what those fluids are in his tank and they, too, are subject to variation, but either or both of those gauges or measuring devices might

(Deposition of Sidney W. Newell.)

warn an operating engineer that something had changed in his lubricating system.

He has to make a lot of assumptions like we have had to make a lot of assumptions here to try to put all of the data together and come up with the answer. There are no direct measuring devices that would tell him, no red light that would turn on and say, "You have water in your oil," or anything of that nature.

Q. But there is an indicator showing the level of your oil, is that correct? [774]

A. There is some indicator. I am not sure of the detail of it, but I have never seen a lubricating oil day tank that does not have some method of taking a sounding as to the quantity of the contents of the lubricating oil day tank.

Q. If water or some other fluid were to get into the oil to such an extent as to contaminate it, it would cause the oil there to arise, wouldn't it?

A. Not necessarily. It would appear to be so, but we find from experience that we burn lubricating oil when an engine operates. We find that a large engine of this type takes many hours to get warm and reach a static condition, variations in engine room temperature, variations in sea water, things of that nature will vary the amount of oil that will appear in the lubricating oil day tank.

Q. The matters that you have referred to would not in the main cause the oil level to recede rather than rise, isn't that correct?

(Deposition of Sidney W. Newell.)

A. No, that is not true. We find that on a rising temperature the lubricating oil in the day tank is increased. On a lowering temperature the oil in the day tank diminishes.

Q. Would the condition that you found at Long Beach, that is, the amount of contamination that you found, in your opinion have caused the oil level to rise? A. I cannot be sure.

Q. Adverting now just to another matter out of order, you [775] have identified for the Cross-libelant a print of this engine which has been marked Exhibit R for Identification and you have stated that you gave a copy of that print to two men from Commercial Ship Repair or two men who identified themselves as representatives of Commercial Ship Repair. Do you know when you gave them to them?"

Mr. Howard: Your Honor, that is the large drawing that was not available this morning. We did not have it marked for identification then. I ask leave to have it marked for identification now.

The Court: You may do that.

(Diagram marked Respondent's Exhibit A-19 for Identification.)

"A. I don't recall having made any note as to the date. The approximate date was ten days ago.

(Deposition of Sidney W. Newell.)

Q. Approximately ten days ago? A. Yes.

Q. You have stated in your opinion that the contamination of oil that you found in the crankcase of the Urania was a cause of the breakdown of the timing gears, is that correct?

A. That is correct.

Q. Is the main propelling engine of the Urania lubricated entirely by the same lubricating oil? [776]

A. Entirely by the same lubricating oil? No, sir.

Q. Is the crankshaft lubricated by the same oil which lubricates the timing gears?

A. Yes, sir.

Q. Is the camshaft lubricated by the same oil that lubricates the timing gears? A. Yes, sir.

Q. In your opinion is there any other cause besides the contamination of the oil for the breakdown of the timing gears?

Mr. Howard: You are referring to the first breakdown?

Q. (By Mr. Hokanson: Let's relate this question to the first breakdown.

A. Nothing that I recall.

Q. From your observation?

A. I did not see the vessel after the first breakdown prior to the second breakdown. I did not see the vessel between the time of the first breakdown and the second breakdown.

Q. Is it your opinion that there is any other contributing cause to the second breakdown?

A. No, sir.

(Deposition of Sidney W. Newell.)

Q. Now, the helical timing gears are made of steel or cast iron, is that true? A. Yes, sir.

Q. And your main bearings are babbitt lined or made of white metal, is that correct?

A. They are lined with babbitt or white metal.

Q. And the degree of friction, weight and thrust which is carried by the main bearings is infinitely greater than the [777] friction and weight carried by the timing gears, isn't that true?

A. That is not correct.

Q. Would you elaborate on your answer?

A. In a helical gear or a pair of helical gears transmitting any load the pressure is infinite. We know from a practical point of view that nothing will stand an infinite pressure, so we realize that rather than having only a point contact which is the theoretical bearing which exists in a pair of helical gears we actually have a surface. Also we know that on our main bearings we have a substantial area which carries a total force, but since we have an area to carry a force we have a lower unit pressure than we do where we only have a point to carry of force.

Q. Now, the burden which the vertical shaft carries is the burden of operating the camshaft, is that true? A. Yes.

Q. Which in turn operates the valves?

A. That is correct, it also operates other auxiliaries which I have mentioned before; namely, the

(Deposition of Sidney W. Newell.)

fuel pump, the lubricating oil pump, the governor, perhaps one or two others.

Q. And isn't it true that steel or cast iron is less susceptible of galling than white metal, assuming the weight is carried?

A. I would say that the susceptibility to galling is difficult to accurately understand, and many engineers argue [778] loud and long both ways on that. I certainly couldn't draw a definite conclusion from that.

Q. Which is harder, steel or babbitt?

A. Steel is, particularly as exemplified in these gears. It is much harder than babbitt.

Q. How much harder?

A. Is it sufficient if I say many times harder?

Q. That will do. Now, in your inspection of the Urania, did you look at the main and crank bearings?

A. I saw a few bearings that were out. I didn't examine all of them.

Q. Were they galled?

A. No, they looked in good shape.

Q. In other words, the only gears that were affected were the timing gears?

A. To the best of my knowledge that is correct.

Q. And they were all lubricated by the same oil?

A. That is correct.

Q. And yet you would say that the contaminated oil, not affecting any other bearings which bear

(Deposition of Sidney W. Newell.)

the main weight of the engine nevertheless caused the galling of the timing gears?

A. Yes, that is correct.

Q. How would that be possible?

A. We have discussed the relationship which exists between pressures in a bearing, be it main or connecting rod, and [779] the pressures which exist on a helical gear.

Since the pressures encountered on helical gears are much, much greater than those which exist on a cylindrical bearing, an oil film, or lubricating film, be it water or air or anything else, will break down under a pressure. The higher that pressure the greater the tendency of that film to break down. Since the film strength would be approximately the same in the bearing as in the gear because we are using the same lubricant but its finite film strength can be broken by a greater pressure and since the greater pressures exist in the gears, I know from experience that that film strength can be exceeded in helical gears where it will not be exceeded under the same conditions in the bearings.

Q. As I understand your answer, Mr. Newell, you are suggesting by reason of the greater surface of the other bearings, the main bearings, et cetera, the degree of weight or pressure is less and consequently by virtue of that ratio, the timing gears have a greater weight to carry because they are smaller, is that correct?

A. An engineer differentiates between weight or

(Deposition of Sidney W. Newell.)

force and pressure. The definition of pressure, as I used the word pressure, is the weight or force per unit area, therefore the timing gears have a greater pressure even though the total force or weight may be less. [780]

Q. Well, you say, may be less. Could you state from your knowledge of this engine what the differenec is in weight carried by the timing gears and the weight carried by, for instance your main bearings, your thrust bearings, and your journal and crank bearings?

Q. Do you mean weight or do you mean pressure, sir? A. Let's take weight first.

Q. According to the definition of weight, as I understand it, it is the attraction of gravity for any part. On that basis there is no weight for any of the helical gears to support.

Q. Let's consider it in terms of pressure now.

A. In terms of pressure, the pressures which the helical gears have to contend with are at least fifty times and perhaps one hundred times as much as the pressures which we find are imposed on the main bearings of the engine under discussion.

Q. (By Mr. Howard): Fifty to a hundred?

A. Fifty to a hundred times.

Q. (By Mr. Hokanson): How long can helical gears of the type we have under consideration here run without galling, without any lubrication at all?

A. They will begin to show evidence of distress

(Deposition of Sidney W. Newell.)

in less than an hour's operation without any lubrication at all.

Mr. Howard: Excuse me. You are speaking of oil [781] lubrication?

Q. (By Mr. Hokanson): Without any lubrication at all was the question.

A. We are disregarding air as a lubricant for the moment.

Q. Have you completed your answer to the question?

A. Yes, I said one hour, that is my answer.

Q. Assuming you had water only as a lubricant, how long would the helical gears withstand galling?

A. Substantially no different length of time would be noted in the gears being operated with water at a lubricant or being run dry.

Q. Normally the course of wearing in a helical gear is caused by misalignment, isn't it?

A. I can't speak of helical gears in general because I only know helical gears as they apply to certain limited applications.

Q. And with respect to the helical timing gears on the Urania, could the galling or weakening of those gears be caused by misalignment?

A. I don't believe that is physically possible.

Q. If there were a bend in the shaft, would it cause galling?

A. I don't believe that it is possible for the vertical shaft to be bent enough laterally or otherwise to have caused galling in the helical gears. [782]

(Deposition of Sidney W. Newell.)

Q. These gears operate on the principle of meshing, don't they? A. That is correct.

Q. Would those gears cut each other if they were not properly aligned?

A. Within any limits that I can envision in an engine such as is in the Urania it would not be possible to misalign the gears to the extent where they would cause cutting one upon the other."

Mr. Hokanson: I move to strike the answer as not responsive. I asked him whether the gears would cut each other if they were not properly aligned. The witness then does not answer the question.

The Court: The objection is overruled.

"Q. It would not be possible to misalign them to that extent?

A. It would be possible if you wanted to use an interpretation of the word alignment to include the backlash that was set in the gears. It would be possible to set the gears so that the bearing pressures which we have discussed would be sufficiently high as to cause a breakdown of the oil film and permit galling to occur, but on the engine such as the [783] one in the Urania, the locking devices for the gears are installed in the factory to prevent this unsatisfactory meshing of which I have just spoken.

(Deposition of Sidney W. Newell.)

Q. Let me ask you this, is there any adjustment on the thrust or carrier bearing of the vertical shaft which if worn or not properly adjusted would allow the shaft to move and allow the gears to crowd together and wear excessively?

A. There is an adjustment which I have already mentioned which is taken care of in the factory at the time the engine is built that could be improperly initially adjusted, but which is not subject to any later alteration.

Q. When the engine is running ahead with this type of spiral or helical gears on the vertical shaft, does it tend to lift it or lower it?

A. I am not sure on this particular engine which way the lower vertical shaft gears thrust when the engine is in the ahead running position.

Q. You don't know whether it is up or down?

A. I am not sure whether it is up or down.

Q. What arrangements are there for keeping the vertical shaft in proper position so that the gears will at all times properly mesh?

A. Referring again to figure 21, entitled, Vertical shaft thrust bearing, on page 60 of the instruction book, Exhibit O, you will recall that we have two basic types of bearing, [784] one is the babbitt lined radial bearing and the other is the duplex ball roller or anti-friction bearing. The first or babbitt bearing takes care of the radial load on the vertical shaft, whereas the anti-friction bearings

(Deposition of Sidney W. Newell.)

take care of the vertical load that may be imposed on the vertical shaft.

Q. The filters that you have referred are for the purpose of removing extraneous matter from the lubricating oil, is that correct?

A. Yes, that is correct.

Q. And if removed, does a filter show signs of extraneous matter upon internal examination?

A. Yes.

Q. Will it show salt water? A. Yes.

Q. What did you do at Long Beach when you went there, Mr. Newell, on the Urania, if anything?

Mr. Howard: I object to the question on the ground the witness has already stated what he did when he went on the vessel. Did you want him to answer it?"

Mr. Howard: I will waive the objection.

"A. I tried to find what I felt was the basic cause of the troubles that had been encountered.

Q. (By Mr. Hokanson): How many days were you there?

A. I was there on the afternoon and evening of Friday, [785] November 12th and Saturday morning, November 13th, 1948.

Q. Your presence on the vessel was merely an inspection tour? A. Yes.

(Deposition of Sidney W. Newell.)

Q. Now, when Mr. Cross was in the Urania, you had telephone conversations with him, is that right?

A. That is correct.

Q. Is Mr. Cross an engineer?

A. Mr. Cross is the foreman of our assembly department at the factory.

Q. Is he an engineer?

A. Under some definitions of the word engineer, he is an engineer. By training he is a mechanist, a tool maker and an operating engineer.

Q. Why was it necessary to talk to him by long distance telephone?

A. Because I wanted to do everything that I could to contribute my own opinion, my own experience as to what they may have encountered. I am always apprehensive at sending a man to sea and particularly so when a man is going to sea on a vessel that has had trouble. I feel morally responsible for his well being and his safe return. I felt that by telephoning him I could help him get the vessel and himself home.

Q. You had some question about his ability to effect these repairs, did you?

A. Oh, none at all. [786]

Q. You have included the cost of these telephone calls in your bill to the Cross-libelant in this case?

A. Yes, that is correct.

Q. Now you have stated that you did not preserve any of the parts that were removed or replaced on the Urania. Why not?

(Deposition of Sidney W. Newell.)

A. They were not our parts.

Q. Do you know what was done with them?

A. I do not.

Q. Did you know that there was litigation involving the Urania at the time these repairs were made by your company?

A. To the best of my knowledge there was none at that time.

Q. Were you ever advised by the Compania Naviera Limitada or any of its representatives at or prior to the time that you inspected the Urania in Long Beach that repairs had been made on this vessel at Seattle?

A. Yes, I knew that repairs had been made on the vessel in the Seattle area.

Q. Did you ever talk to Mr. Demetri Antippas?

A. Yes, I talked to Demetri Antippas.

Q. When?

A. I first met Mr. Antippas on Saturday, November 6th, 1948. I do not recall whether I talked to Mr. Antippas on the telephone prior to that date or not. Subsequent to that date I have talked with Mr. Antippas many times. [787]

Q. Had you ever discussed with him the fact that, or did he ever discuss with you the fact that he was preferring a claim against Commercial Ship Repair based upon this breakdown?

A. On Saturday, November 13th, Mr. Antippas took me in the automobile which he had use of from the Urania to uptown Los Angeles. At that

(Deposition of Sidney W. Newell.)

time he mentioned that there was a possibility that there might be some kickbacks to the people who had overhauled the vessel in Seattle. I do not recall that he mentioned who the parties involved were or that there was going to be any legal action. He merely expressed dissatisfaction and intimated that he was going to endeavor make redress of one sort or another.

Q. Did you ever discuss the same matter with him at any other time?

A. No, I have never discussed the matter with him. We received a letter some place along the line.

Q. Do you have that letter with you?

A. I don't have the record with me, advising the Union Diesel Engine Company that there was litigation at least pending concerning this work.

Q. That was the extent of your conversation or correspondence with him concerning the matter of litigation?

A. To the best of my recollection that is all there was with the addition that at one time I notified what I thought were both sides of the concern that since there appeared to [788] be pending litigation we had better not talk any more about it.

Q. Now, referring to Exhibit P-3 for Identification, your invoice to Compania Naviera Limitada, you charge for the services of Engineer Cross October 28th to November 11th, fifteen days, $30.00 a day. You there describe him as an engineer. If he is not an engineer, why did you so describe him?

(Deposition of Sidney W. Newell.)

A. I object, sir, to you putting words in my mouth that I did not describe him as an engineer. I tried to make careful the fact of what type of engineer he might be classified as. I believe that Mr. Cross is a competent operating engineer.

Q. And that is the reason you designate him in the invoice as an engineer?

A. In our practice when we send a man out to do service work, adjustment work, the general type of work that was done on the Urania, we classify all of those men as service engineers. Ordinarily we would just refer to them as engineers because it is a very broad term that can cover most anything.

Q. Now, on November 3rd, you list a telephone call to the Urania $23.50, that is on page P-4. Was that a long call?

A. Yes, that was quite a long call.

Q. What did that relate to, if you remember?

A. As I recall that call or group of calls, they concerned [789] themselves with Mr. Cross advising first that the vessel seemed to be running satisfactorily, then later that the vessel was not running satisfactorily, then that he had decided that it was necessary to get a tow. Then I had to look up on the charts and see where I thought they were and try to tell them what fishing points I knew of where fishing boats take protection and finally there was a call, Mr. Cross told me of many of the things that he would need when the vessel got in. Now, as

(Deposition of Sidney W. Newell.)

I have intimated, I can't be certain that that was November 3rd, but it was very close to it and because of the size of the call I imagine that that is what the call or calls concerned themselves with.

Q. Did Mr. Cross ever tell you in these telephone conversations you had with him while he was aboard the Urania what the cause of that breakdown was?"

Mr. Howard: I object to that question as asking for a hearsay answer.

Mr. Hokanson: I offer it for the purpose of establishing whether there was a discussion between Mr. Newell and his serviceman that he had sent aboard, Your Honor, and whether an effort was made to get at the basic cause of the trouble. [790]

The Court: The objection is overruled.

"A. Mr. Cross and I discussed on several occasions over the radiophone what the seemingly probable cause of the troubles was.

Q. What was his idea of the cause, Mr. Newell?

Mr. Howard: The same objection."

Mr. Howard: My objection continues to this line of questioning.

Mr. Hokanson: The same ruling, Your Honor?

The Court: I think so. It is cross-examination.

(Deposition of Sidney W. Newell.)

"A. The chief thing that Mr. Cross pointed out was that the lubricating oil was brown and we agreed that the only thing that we knew that would make the lubricating oil become this characteristic brown was water in the oil.

Q. Did you suggest anything that he should do with respect to the oil?

A. I told him to dump his lubricating oil and put in new lubricating oil.

Q. And assuming that he put in new lubricating oil prior [791] to the second test after the first breakdown?

Mr. Howard: The second test?

Mr. Hokanson: I will reframe the question.

Q. (By Mr. Hokanson): Assuming that the lubricating oil had been replaced with new oil and assuming further that there were some leaks in the lubricating oil cooler, in your opinion could the timing gears wear out in 36 hours under those conditions?

A. Yes, they would have no trouble wearing out in 36 hours. They could wear out readily in 36 hours if there was water in the oil.

Q. Assuming that we start with new lubricating oil before that trip? A. Yes.

Q. Now, did you furnish any parts to the Urania which were not worn out by what you describe as contaminated oil? A. Oh, yes, sir.

Mr. Howard: When are you referring to, Counsel? Are you referring to the parts on the invoice identified as P or Q?

(Deposition of Sidney W. Newell.)

Mr. Hokanson: That is right, Exhibit P only.

Q. (By Mr. Hokanson): Why would it be necessary, for instance, to furnish a lubricating oil manifold branch pipe?

A. Two lubricating oil mainifold branch pipes could be necessary because it is difficult and in some cases impossible [792] to take out some of the small pieces of an engine without damaging them and the men went in to check the bearings, to check the lubricating oil system, to make certain that there were no troubles there and apparently Mr. Cross found that two of the branch lines were in need of replacement when they started to put the engine back together again.

Q. Did you ever furnish a new vertical shaft?

A. I believe we did. I can't be certain of that.

Q. You can refer to the exhibit.

A. If you give me the invoice I will tell you yes or no.

Q. All right, I will show you the invoice.

A. Apparently no new vertical shaft was supplied.

Q. Why would it be necessary to replace twelve filter elements?

A. Because they had become dirty, clogged and no longer serviceable.

Q. And why would it be necessary to install additional lubricating oil lines to these gears?

A. We have found that we can put on lubrication in very many different ways with seemingly

(Deposition of Sidney W. Newell.)

the same general results, so we will frequently put on two or three different ways either one of which from experience we know will work satisfactorily just as an added measure of precaution.

Q. You did put on additional lubricating oil lines to the gears in question, is that correct? [793]

A. I instructed the men who were on there to put at least one more lubricating oil line on to some of the gears.

Q. You mean before the ship arrived at Los Angeles?

A. I would imagine so. I can't be certain of that. If I thought of it I would have told them to.

Q. As a matter of fact, assuming that Mr. Cross did install additional lubricating oil lines and assuming further that he was aware that the oil appeared to be of a different color, would that be good practice?

A. Would what be good practice?

Q. Putting on additional lubricating oil lines to the gears that were apparently affected here?

A. Oh, yes, sir. We believe that no wearing part can be too well lubricated.

Q. But if the lubrication was contaminated and wouldn't service the part properly, would adding more of the same contaminated oil to those gears help in any way?

Mr. Howard: You are asking his opinion on that, Counsel?

Mr. Hokanson: I asked the question, yes.

(Deposition of Sidney W. Newell.)

The Witness: Would it help was the question?

Q. (By Mr. Hokanson): Yes.

A. I am afraid that nothing would help. More lubricating oil lines wouldn't do any more than the lubricating oil line that were put in the engine as we originally built it. [794]

Q. So that assuming that it was known to Mr. Cross that there was something wrong with the oil and assuming further that he added additional oil lines to these gears, he would be working at cross purposes in frustrating his one opportunity to make proper repairs, isn't that true?

A. No, sir, it is not.

Q. What is the case then?

A. You will have to get your case in some semblance of order before I can give an answer to that. I am sorry, but that is the fact.

Q. You decline to answer the question?

A. Will you let me answer the question?

Q. I have asked it.

A. The vessel ran, to the best of my knowledge, satisfactorily for a number of years with the lubrication system that was installed in the vessel prior to the time Mr. Cross went aboard it in Manzanillo for the first time. The changes which he made, if any, to the lubrication system, so far as these gears were concerned, was in our experience at least as good and probably a better system than the one which had functioned satisfactorily before. It is not working at cross purposes to add to gears of

(Deposition of Sidney W. Newell.)

that nature more lubricant. If the lubricant is not capable of operating satisfactorily under the loads that are imposed upon them, more of that lubricant will not do any good, but it is not working at [795] cross purposes to add more lubricating oil to the gears.

Q. What Mr. Cross should have done was to get at the cause of the contamination of oil, isn't that correct?

A. That was not what Mr. Cross was sent there to do.

Q. What was he sent there to do?

A. Mr. Cross was sent there to Manzanillo to check the operation and to return to Los Angeles with the vessel.

Q. I note, Mr. Newell, that you have made direct reference to a document there. Do you have a recollection independent of that piece of paper from which you have testified or do you rely on the notes that you made there?

A. I remember quite definitely that I sent Mr. Cross to Manzanillo to put in the gears. We were neither authorized or requested nor was Mr. Cross instructed to endeavor to tear the unit down so far as he might have to to find out what the cause of the trouble was or to make whatever changes he felt were desirable.

Q. So that he was given specific instructions and beyond carrying those out he had no discretion, is that correct? A. That is correct.

(Deposition of Sidney W. Newell.)

Q. Now, having made these repairs, if you know, why was the vessel returned to Los Angeles rather than directed on its voyage to Panama?

A. I don't know.

Q. Now, some difficulty was experienced with the governor, wasn't it, by Mr. Cross? [796]

A. Yes, some trouble was experienced with the governor.

Q. What was the matter with the governor?

A. The vertical shaft was forced to operate most erratically when the gears and the related parts were worn out with the net result that the governor which is located on the vertical shaft was forced to operate most unnormally and it wore itself out badly or at least to the extent that when repairs were later made it was quite apparent that the governor should be replaced, reconditioned, in general fixed up.

Q. Now, if you have a variation in the r.p.m. of your engine, let's say from 325 down to 240 and back again, at intervals, would that be caused by difficulties with the governor? A. No, sir.

Q. What would cause that?

A. By different setting of the throttle.

Q. Assuming that that happened without any change in the throttle, what would cause the r.p.m.'s of the engine to change radically up and down?

A. Poor adjustment, poor parts or changes in load are the only things that I can think of at the

(Deposition of Sidney W. Newell.)

moment that might possibly cause a variation of that nature without changing the throttle. Actually I have never seen a phenomena of that type occur or have I ever heard of it occurring.

Q. Couldn't it occur if something was wrong with the [797] governor which controls, as I understand it, the fuel intake into the cylinders?

A. Well, I am afraid that your understanding of the governor is incorrect, in that the governor is only an over speed governor and not a speed regulating governor. The purpose of the governor is to protect the engine in the event that a propeller becomes lost or a shaft becomes broken rather than as a constantly operating speed regulating governor.

Q. How long does it take to time an engine such as the one on the Urania, how long does it take to effect the retiming of an engine of this type?

A. To set, or what we classify as retiming an engine, a man with one or at the most two helpers, can do a job in comparatively few hours depending upon how badly it is out of time and other similar factors. It might take one or two hours or it might take six or eight hours, in that general magnitude of time.

Q. Would three days be an excessive amount of time? A. To retime an engine?

Q. Yes.

A. If we understand the same thing by retiming an engine, three days would be excessive.

Q. If upon completing the timing or retiming of

(Deposition of Sidney W. Newell.)

an engine it is run full ahead with the result that the pistons hit [798] the valves, what does that indicate?

A. It indicates that something is wrong in the timing to some extent. The amount may be quite large or quite small.

Q. How could a piston hit a valve in this type of engine?

A. If an engine is timed with improper clearance in the rocker arm adjusting screws, or in any other way, it is improperly timed, the comparatively small clearances between the valves and the pistons can be reduced to such a point that there is no clearance there.

Q. That is a bad condition, isn't it, when the pistons hit the valves?

A. Oh, yes, it is a very poor condition, very poor.

Q. Could that cause damage to your timing gears?

A. If the engine can run without breaking rocker arms; we have never found that it has damaged the timing gears, but again, anything can be true.

Q. There might be a thrust back that might do damage to those gears?

A. That is possible, but as I pointed out, we have a weak link there in that whole train to take care of such matters, namely, a cast iron rocker arm so that if the valve and the piston merely touched

(Deposition of Sidney W. Newell.)

each other so that the load which would be imposed back through the entire mechanism finally to the gears would be quite small and then no damage would be done to the gears. It is an occurrence that transpires [799] quite frequently.

Q. What do you mean, pistons hitting valves?

A. Yes, that is true.

Q. Why does it happen frequently?

A. As I just mentioned, if the rocker arm adjusting screw is too tight, any one of many, many variations that can occur, only a few thousands of an inch variation in the location of the keyway in a gear can upset the timing, a small amount. We have to work within practical limits and unfortunately sometimes you will get an accumulation of practical limits that run you outside of an acceptable tolerance and the acceptable tolerance is exceeded when the pistons hit.

Q. Isn't it good practice in timing an engine to turn it over by hand and make certain before you run it that that condition would not obtain?

A. Yes, that is done, but unfortunately a light hitting is not noticeable because the velocities are too low, you don't get any noise out of it when you are barring it over by hand. The force required to bar the engine over is such that if there is a slight hitting of the valves you don't notice it when that increased drag is imposed on the engine, so even if you turn the engine over by hand you can't always be sure that everything is completely in the clear.

(Deposition of Sidney W. Newell.)

Q. I will hand you Exhibit P-1 through P-13. Are there [800] any items you have furnished there that don't relate to the galling of the timing gears?

A. I believe that invoice identified as P-7 which covers 6 AV6 3221 high pressure fuel lines from manifold to valves in amount $54.00 were not related to the galling of the gears. There are some other items that come to my attention that I can't be too certain as to whether or not they were necessary, for example, on invoice P-8, the item No. 4 is 1 V6-1950A fresh water gauge. I don't see offhand where that had any direct relationship to the galled gears. Similarly, for item No. 5 1 V6-1950 salt water gauge, $13.90.

Q. (By Mr. Howard): Each?

A. Each, yes. I am sure that there are other items that would be subject to further clarification as to just where they were used on the particular job. There are many of these parts that might or might not be required, but since I was not there during all the work or supervising all the work, I can't be sure.

Mr. Hokanson: This is off the record.

(Remarks off the record.)

Q. (By Mr. Hokanson): Did you find anything wrong with the liners or the pistons, if you examined them?

A. I didn't see anything wrong with the liners or pistons or bearings that I saw.

(Deposition of Sidney W. Newell.)

Q. Did you examine the air, water and oil tubing? [801] A. No, sir.

Q. Did you inspect the vertical shaft on the ship as it came to you?

A. Oh, yes, I saw the vertical shaft when I was there.

Q. Did you inspect it for bends? A. No.

Q. You don't know whether it was straight or not? A. No, sir.

Q. Let me ask you this question: Would there have been any other cause than contaminated lubricating oil which resulted in the galling of the timing gears, in your opinion?

A. To the best of my knowledge, there was nothing brought to my attention that could possibly have caused the galling of the timing gears on the engine in the Urania except contaminated lubricating oil.

Q. You base that opinion just on what you observed and what was told to you by others, is that correct?

A. One of the chief bases was my experience with engines of that specific type and related types over the years."

Mr. Hokanson: I move to strike the answer as not responsive.

Mr. Howard: Counsel is asking the question, in effect, what he based his opinion on.

Mr. Hokanson: I think the question calls for a

(Deposition of Sidney W. Newell.)

yes [802] or no answer.

The Court: The objection is overruled.

"Q. You mean at sea or as an engineer?

A. At sea or after they have been to sea and have come home.

Q. I am speaking now of your experience, Mr. Newell.

A. That is what I am speaking of, too.

Q. That is what I wanted to get, Mr. Newell.

A. In other words, I have been to sea with that same engine, I have seen troubles at sea, I have seen troubles in various yards, both caused by myself and caused by others.

Q. How long, under ordinary operating conditions, will these timing gears, both lower and upper, last without substantial wear before they need replacement?

A. The first Union diesel engine that was built was built in 1923 and to the best of my knowledge, that engine is stilling operating and still has her original gears in. As I recall, the first engine of the Model V-6, such as was in the Urania, was built in 1937, and I know that vessel operated through most of World War II and I am not sure whether it is still in existence or not, but at least to the best of my knowledge, up until the beginning of World War II, which was 1941, the original gears were still functioning satisfactorily in the engine.

Q. When was the ingine bulit for the Urania?

(Deposition of Sidney W. Newell.)

A. The engine was shipped by us immediately after it was built and tested on or about December 24, 1942.

Q. Could poor gear material result in wearing down more quickly than those on the vessels that you have mentioned? A. Oh, yes, yes.

Q. In such event could that contribute toward the galling of them?

A. Well, I can't differentiate between galling and wear. Galling is merely a type of wearing.

Q. Isn't it possible, Mr. Newell, that a loose part could fall down and get into those gears?

A. Yes, it could happen.

Q. In which case you might break a tooth or get the gears slightly out of line, resulting in galling?

A. Any part that I can envision that could possibly get in between the gears would of necessity be of sufficient magnitude as to prevent any further operation of the engine.

Q. Did you inspect the worn gears at any time?

A. Yes, I saw the gears after they were taken out, which they told me were the gears that they had taken off first in Manzanillo and then the next one they had taken off in Long Beach.

Q. Who told you? A. Mr. Cross.

Q. Did you examine them carefully? [804]

A. Yes, I examined them.

Q. What was the character of the galling?

A. A badly galled or scuffed and heavily worn

(Deposition of Sidney W. Newell.)

surface which had been extensive enough to carry itself through the case on the gear and into the relatively soft tough core. The gears were worn out.

Q. You mean the teeth were worn clear down?

A. The teeth were in some places, I would say, not more than one-half to at the most two-thirds of the thickness of the original tooth.

Q. And was that true of the upper gears as well?

A. I don't recall the upper gears quite as well. I can recall seeing one pair of upper gears that were scuffed badly. I don't recall having seen any of the upper gears that were worn to the same extent as the lower gears as I have mentioned before.

Mr. Hokanson: I have no further questions.

Redirect Examination

By Mr. Howard:

Q. How many samples of the oil did you take out of the base of the crankcase at Los Angeles?

A. Approximately a dozen.

Q. Now, this auxiliary pump that you testified about was hooked up to the lubricating oil cooler since 1943, you remember that was your recollection?

A. I didn't so testify to the best of my recollection. [805]

Q. What was your statement as to this auxiliary pump, Mr. Newell?

A. As I recall, I said that an auxiliary pump was connected to the piping which could lead to the coolers.

(Deposition of Sidney W. Newell.)

Q. Which could lead to the coolers?

A. That is correct.

Q. You don't know that it did lead to the coolers?

A. I don't know when it was connected with the coolers.

Q. Is it installed in such a manner that it could be turned on or turned off by a valve?

A. As I remember the installation, they had a blank flange which was constructed of one piece but of two parts. The oval shaped piece of plate was blanked in one end and provided with a hole in the other end so that the normal connection of the piping was interrupted where this blank flange was inserted, but if you wanted to clear that obstruction, the oval shaped member could be reversed and the end with the hole in it put at the junction of the shipboard piping and the engine piping thus permitting water from the pump to be discharged into the cooler piping.

Q. As I understand it then, by reversing this flange, the water through the pump would either go into the cooler piping or might be directed in some other direction?

A. That is the best of my recollection of the arrangement, yes, sir. [806]

Q. Now, Mr. Newell, you testified regarding the practice of cleaning the lubricating oil cooler and that it required periodic cleaning. When that is

(Deposition of Sidney W. Newell.)

done, can it be done aboard ship or must it be removed from a ship?

A. On this type of cooler, shipboard cleaning is certainly impractical if not impossible. We normally consider that it is impossible aboard a ship, though anything that can be rigged up ashore can be rigged up aboard a ship.

Q. After how many hours of operation would you say the cooler should be cleaned?

A. Oh, many thousands of hours.

Q. I notice by reference to Exhibit P-6, it is indicated that a number of filter elements were supplied to the vessel. Was that 12?

A. I believe that is correct.

Q. Assuming that the Chief Engineer or the Service Engineer who was aboard the vessel had encountered contamination in the lubricating oil, isn't it likely that an excessive number of filter elements might have been used by frequent replacement?

A. As I recall, there are 12 individual elements fitted into one lubricating oil filter. It is generally considered good practice to replace all of the elements if you are going to replace any of them.

Q. The 12 elements would constitute one normal replacement [807] in the filter?

A. I believe that is correct.

Q. Now, when the Urania left Manzanillo with Service Engineer Cross aboard, you knew that she

(Deposition of Sidney W. Newell.)

was to return to Los Angeles? A. Yes, sir.

Q. Did you know that she was to return to Los Angeles for further repairs? A. Yes, sir.

Q. As I understand your previous testimony, if a loose part had fallen into the timing gears, it would have caused an immediate stoppage of the engine?

A. That would be my opinion, yes, sir.

Mr. Howard: That is all the questions I have.

Recross-Examination

By Mr. Hokanson:

Q. It is a very simple matter to clean a cooler, isn't it?

A. Not that type of cooler, no, sir.

Q. Well, it is cleaned on both the oil and salt water sides, isn't it? A. Yes, it is.

Q. It is normal practice, I believe, in cleaning them, to flush out your salt water side first by using a chemical, is that correct?

A. Yes, sir.

Q. And then you flush it out with water?

A. Yes, sir.

Q. And you blow it out with air?

A. Yes, sir. [808]

Q. You can look through them and see whether they are clean, can't you? A. No, sir.

Q. You can't? A. No, sir.

Q. Can you on the salt water side?

A. I believe not, sir.

Q. Can you on the lubricating oil side?

(Deposition of Sidney W. Newell.)

A. I believe not.

Q. Have you ever cleaned one?

A. I have never tried to clean a cooler of our type in our shop. We won't touch them.

Q. Why not?

A. Because the manufacturer recommends a very extensive process to be followed in cleaning heat exchangers of that particular type.

Q. You mean to say then that the procedure for cleaning this type of cooler could not be done except by the factory that manufactures them?

A. No, sir.

Q. Are there instructions as to the cleaning on the plates?

A. Not to the best of my recollection.

Q. What is there unique about this type of cooler that requires a special process?

A. The passages within the coolers are very small, quite tortuous, and you can't clean out all of the interior portions by any method which to most of us appears normal and more or less routine with ordinary maintenance or [809] ordinary mechanical equipment. It would seem obvious and straightforward to one who is acquainted with that type of equipment, but this type of equipment is really designed and built for submarines rather than for commercial tankers.

Q. You did remove the flange on the salt water side and look in and see those chambers, didn't you?

A. You can only see the ends of them.

(Deposition of Sidney W. Newell.)

Q. Well, you need a cooler, don't you, for the purpose of keeping your lubricating oil within temperature limits?

A. It all depends on what limit you set up. Obviously we thought that a lubricating oil cooler was desirable on this type of engine. It is normal practice with most engine builders to supply lubricating oil coolers, but on engines such as the Union diesel engine in the Urania, a lubricating oil cooler is not essential for operation, particularly at reduced speeds and for comparatively limited periods of time.

Q. Did Mr. Cross remove the cooler?

A. I don't know who removed the cooler when it was finally removed.

Q. Where was it removed, do you know?

A. To the best of my knowledge, it was removed at Craig Shipyard in Long Beach.

Q. You mean to say then that with this type of cooler at sea, assuming that you are in warm southern waters where your temperature runs as high as 70 and 80 degrees, that if [810] it became known to the engineer that the cooler was dirty or leaking or plugged, he would have no way aboard ship of effectively cleaning the cooler and proper procedure would be to remove it?

A. Yes, put it out of operation. You are assuming that he knew the cooler was in need of being taken out of operation.

(Deposition of Sidney W. Newell.)

Q. Is that part of your answer to the last question? A. Yes, sir.

Q. Under the system of oil cooling on the Urania, could the lubricating oil cooler be by-passed so as to run oil directly from the lubricating oil day tank and the sump, and the rest through the engine?

A. I know of no way that the oil could be directly by-passed from the lubricating oil day tank to the sump of the engine. It can be indirectly by-passed to it through leakage in valves, pump elements, by the bearings, and other places that would have too much oil.

Q. Can you by-pass the cooler and still get lubricating oil through the system?

A. Yes, there is a lubricating oil by-pass valve.

Mr. Hokanson: That is all.

Mr. Howard: No further questions."

Mr. Howard: That concludes the deposition of Mr. [811] Newell, if the Court please.

The Court: Do you offer that deposition in evidence?

Mr. Howard: I offer that deposition, Your Honor.

The Court: As a part of the cross libelant's case in chief?

Mr. Howard: Yes, Your Honor.

The Court: It is so received.

Mr. Hokanson: Your Honor, Mr. Howard made

an offer of the invoices, and I asked that the Court reserve its ruling on the admissibility of those documents until the conclusion of the reading of that deposition.

I object to the introduction of the invoices at this time; in addition to the grounds otherwise heretofore stated, on the specific ground that the witness who identified them has stated on cross-examination that it was not within his knowledge as to how many parts listed thereon were necessary in connection with the breakdown encountered at sea.

Mr. Howard: May it please the Court, I intend to next take up the deposition of Mr. N. A. Cross, the service man, and in this next deposition there will be additional testimony of this witness referring to the same invoices that perhaps will cast some further light on it.

The Court: The Court will reserve decision on this [812] point.

Mr. Howard: I will offer Identification A-19. That is the large diagram.

Mr. Hokanson: No objection other than the general objection already lodged.

The Court: It is admitted.

(Respondent's Exhibit A-19 received in evidence.)

The Court: It is in larger detail the same information shown in Figures A and B in Respondent's Exhibit A-16?

Mr. Howard: It is a cutaway of the photographs in A-16.

This is the deposition of Mr. N. A. Cross, starting on page 3.

DEPOSITION OF N. A. CROSS

"Direct Examination

By Mr. Howard:

Q. Would you state your full name and address, please?

A. N. A. Cross, 4023 Marion Court, Alameda, California.

Q. By whom are you employed?

A. The Union Diesel Engine Company.

Q. How long have you been employed by that company? A. Since January, 1941. [813]

Q. In what capacity are you serving at the present time? A. Assembly foreman.

Q. And what is your principal place of employment? A. 2200 East Seventh Street.

Q. Oakland? A. Oakland, California.

Q. Mr. Cross, do you expect to be in the State of Washington on or about April 6th or 7th, 1949?

A. No, I do not.

Q. Where are you working at the present time?

A. I have been in the shop this last week, but I am leaving tomorrow for New Orleans.

Q. Will you state briefly what your duties are as assembly foreman?

A. I supervise the assembly of the engines, the sub-assemblies of all parts that go into the engines,

(Deposition of N. A. Cross.)

the testing of the engines, supplies, all repair work that comes into our work dock and I go out on service work.

Q. How long have you been an assembly foreman? A. Going on three years.

Q. Prior to that time what was your position with the company?

A. I was in charge of the tools, the making of tools, maintenance of shop machinery.

Q. What education have you had, sir?

A. High school.

Q. Have you ever gone to sea?

A. No, I have not. [814]

Q. How long have you been working on Diesel engines? A. Since 1941.

Q. Do you hold any license as an engineer?

A. No, I do not.

Q. Do you on occasions act as a service engineer for The Union Diesel Engine Company?

A. Yes.

Q. And what does that work involve?

A. It involves a lot of things, maintenance of engines, supervision of installation of parts, tuning an engine.

Q. In October of 1948, did you perform some services for the motor tanker Urania?

A. I did.

Q. Do you have with you a record of any notes concerning the services that you rendered to the vessel at that time?

(Deposition of N. A. Cross.)

A. No, just my own personal notes.

Q. Your own notes? A. That is all.

Q. And those are contained in a notebook that you have with you? A. Yes, sir.

Q. Does that record show the dates on which the services were rendered? A. Yes, it does.

Q. Can you state for us the first date on which you commenced to perform work in the service of the motor tanker Urania in 1948?

A. October 28th, 1948.

Q. What did you do on that date? [815]

A. Caught a plane at 7:30 p.m. for Los Angeles.

Q. From Oakland?

A. From Oakland, California.

Q. And will you just go on from there please and tell us where you went and what you did?

A. I arrived in Manzanillo at 7:30 p.m. October 30th.

Q. How did you travel, please?

A. By plane and by train both. I started work, I made an inspection October 30th, that evening, a very hasty inspection and started work Sunday morning October 31st.

Q. That was aboard the tanker Urania?

A. Yes.

Q. Where was it located at that time?

A. It was out in Manzanillo Bay approximately a mile from shore.

Q. Will you state what you found the condition of the main engine to be upon your first inspection on October 30th?

(Deposition of N. A. Cross.)

A. Well, it was partially dismantled. The lower vertical shaft gears were out, the vertical shaft itself was out. The engine was all cleaned up, the intermediate gear bracket disassembled, the gears were in very bad shape, that is, the lower vertical shaft gears.

Q. Did you see the gears that were out of the engine? A. Yes, I did.

Q. Where were they then please?

A. Lying on the deck. [816]

Q. Will you state what you found the condition of those vertical shaft gears to be when you first inspected them? A. Very bad.

Q. Can you amplify what the nature of that bad condition was?

A. Well, they were badly worn, scuffed, galled.

Q. Now, are you referring to the upper or lower vertical shaft gears?

A. The lower vertical shaft gears.

Q. Did you also examine the upper vertical shaft gears?

A. I did. They were in fairly good condition. They showed very little signs of wear.

Q. By the way, when you left Oakland to go to Manzanillo, did you take any tools or parts with you?

A. Yes, I took a set of lower vertical shaft gears.

Q. On whose instructions?

A. My company's instructions, I took some fit-

(Deposition of N. A. Cross.)

tings. I believe I had some gaskets with me. I had a vertical shaft bushing. That is all that I can recall.

Q. Did you make any further inspection of the engine other than what you have already mentioned on your first inspection?

A. Not on the first inspection, no.

Q. Later did you make a further inspection of the engine to determine its condition?

A. Yes, I took the vertical shaft ashore. I chucked it in the lathe, took the vertical shaft ashore, chucked it in a [817] lathe, checked the run-out of it to see if it was true or bent.

Q. What did you find as to the condition of the vertical shaft?

A. The vertical shaft was out of true one-eighth of an inch.

Q. And can you describe where that condition existed on the shaft, the location on the shaft in relation to the vertical shaft bearing?

A. It was right at the stepdown of the shaft where it fits into that lower vertical shaft bearing.

Q. That is the location of the bend?

A. Of the bend.

Q. And was that condition corrected?

A. Yes.

Q. How, please? A. By straightening it.

Q. Was that done ashore in the shops at Manzanillo?

(Deposition of N. A. Cross.)

A. Yes, it was done in the Naval shipyard at Manzanillo.

Q. What did you do with the vertical shaft after that?

A. Took it back aboard the ship and proceeded with my other work.

Q. And that shaft was reinstalled in the engine?

A. Yes, that shaft was put back in the engine.

Q. Now, what additional work did you do about the engine?

A. May I have that question again please?

Q. What additional work did you do about the engine?

A. You mean in all respects, repair work?

Q. Yes. [818]

A. Well, I checked the alignment of the gears when I installed them.

Q. Which gears please?

A. Both the upper and the lower.

Q. What did you find as to the condition of the alignment?

A. Very good. I checked the fuel controls. They were pretty badly set. I had to reset all the fuel controls.

Q. Will you go ahead please?

A. Installed a new oil line to the lower vertical shaft gears.

Q. Did you install new vertical shaft gears, new timing gears?

A. New lower vertical shaft gears, yes.

(Deposition of N. A. Cross.)

Q. You may refer to your notes please in answering this question, how long did it take you to complete this work that you have described?

A. Three and a half days approximately.

Q. Was additional work done on the vessel, on the maintenance of the engine by you?

A. What do you mean by additional work?

Q. I just want to be sure that you have testified for the record as to all of the work that you performed on the main engine?

A. Yes, that was done by me. There may be some items I missed, small items that I don't recall right now. [819]

Q. Were any additional parts required other than what you brought with you from Oakland to complete the repairs at Manzanillo?

A. No, that is all I used there.

Q. After these repairs had been completed, will you tell us what if anything was done then by you in connection with the operation of the engine?

A. How do you mean that, when they were done?

Q. Did you participate in any dock or sea trials?

A. Yes, there was a sea trial there on the Bay of very short duration.

Q. Did you time the engine? A. Yes.

Q. How long did it take to time the engine?

A. What do you mean by timing?

Q. Can you describe what you did in connection with the timing of the engine?

A. Timing is a very broad term. We of The

(Deposition of N. A. Cross.)

Union Diesel refer to it as timing, we set the fuel, that is the timing of an engine. You can also time the camshaft and the timing gears. It runs into considerable explanation there.

Q. Did you actually go through that operation while you were down there at Manzanillo?

A. Yes, I did.

Q. How long did that take?

A. Which timing?

Q. The timing that you have just described to us, Mr. Cross. A. The whole timing? [820]

Q. The adjusting?

A. That was the whole job practically, just about all of it. It was all timing and setting the controls. It all works into one another.

Q. By reference to your notes, can you tell us how long a time was involved in this operation?

A. Two and a half days.

Q. Is that in addition to the three and a half days you testified to previously to effect the repairs?

A. No. I was figuring nothing off one day for the inspection of the vertical shaft and alignment of the gears.

Q. That would be the first day?

A. That would be the first day.

Q. And after that there were two and a half days required to install the gears and complete the adjustments and timing that you have testified to?

A. Approximately, yes.

(Deposition of N. A. Cross.)

Q. And after that how long did the dock and sea trials take?

A. I don't recall exactly. It was a matter of just about a couple of hours.

Q. What did you find the condition of the main engine to be after the dock or sea trials?

A. Well, on the first sea trial I had some valves hitting the pistons and I had to rechange the timing on the upper vertical shaft gears. [821]

Q. How long did that take, Mr. Cross?

A. It is rather a guess, I would say two or three hours.

Q. Then did you have a further trial on the engine?

A. I believe used as a trial just going out of the harbor, as a sea trial there.

Q. How did the engine perform at that time?

A. Very satisfactorily.

Q. Do you recall at what speed in r.p.m.'s the engine was operated during the first trial?

A. Well, I brought it up gradually. I wouldn't say for sure, but I am sure that I brought it up to 325 revolutions per minute.

Q. By the way, what is the normal r.p.m. full speed on that engine? A. 325 r.p.m.

Q. Did you notice the condition of the lubricating oil in the main engine of the Urania on your first inspection on arrival?

A. There was no lubricating oil in the engine.

(Deposition of N. A. Cross.)

The engine had been cleaned out. The day tanks had been emptied.

Q. Was new oil put in after the gears had been replaced? A. Yes, it was.

Q. Do you know what type of oil was put in?

A. No, I couldn't say.

Q. Were any filters changed?

A. It would be only hearsay on my part. I was informed [822] they were. I didn't actually do it myself.

Q. No filters were changed while you were there at Manzanillo? A. No, not while I was there.

Q. Who actually performed this work of changing the gears and checking the alignment of the shaft? A. I did myself.

Q. Did you have any assistance on that from any source?

A. Yes, the engineer and his men helped.

Q. Did you obtain any assistance from mechanics or machinists ashore?

A. No, only that I used the Naval shipyards shop.

Q. Do you recall whether any shore mechanics or machinists came out to the vessel to assist in the repairs?

A. I was told that they did, but not while I was there, no one else.

Q. Will you describe for us briefly what ship repair facilities are available at Manzanillo, Mexico, as you know?

A. Practically none. The Naval shipyard has a

(Deposition of N. A. Cross.)

machine shop there with antique machinery. It was very hard to get anything done at all there.

Q. While you were at Manzanillo, did you check the condition of the lubricating oil cooler or heat exchanger? A. No, I did not.

Q. Why not? [823]

A. Well, I was sent down just to put the gears in. I didn't at that time have any reason to take it off to check it. The engine was clean when I got there. I had no way of knowing that there was water in the oil. I saw no reason to do it.

Mr. Hokanson: I move to strike the last part of the answer on the ground it is not responsive, that part of his answer which state that I had no way of knowing there was water in the oil, and on the further ground it is an assumption on the part of the witness."

Mr. Howard: If the Court please, it seems to me the question is asked, "Why not"? and the witness has endeavored to answer why not, giving his reasons. It is responsive to the question.

The Court: The objection is overruled.

"Q. (By Mr. Howard): Did you have any knowledge of there having been any water in the lubricating oil system? A. None at all.

Q. Did you have any information as to when

(Deposition of N. A. Cross.)

the lubricating oil cooler had last been cleaned or tested?

A. I was told that it was just previous to leaving, I [824] believe, it was Seattle."

Mr. Hokanson: I move to strike that on the ground that it is hearsay.

The Court: The answer is within the scope of the question. The objection is overruled.

"Q. Who told you that, Mr. Cross?

A. In a round about way, the engineer."

Mr. Hokanson: I renew my objection. I will waive the objection, Your Honor.

"Q. (By Mr. Howard): You have stated that a new oil line was installed on the lower vertical shaft gears. Will you explain what your reason for doing that was please?

A. Well, it is a common practice in the shop on this model engine when we would work on that engine to install a new oil line. It is larger. We found that our lubricating oil pumps were sufficiently large to take a larger oil line. It can't be as readily plugged. [825]

Q. As delivered from the factory, how many oil lines serve the lower vertical shaft gears?

(Deposition of N. A. Cross.)

A. Just one.

Q. Was there any evidence that that line as inspected by you or as found by you in Manzanillo was clogged?

A. Can we go off the record for a minute?

Mr. Hokanson: I think your answer should be on the record if you have one to give.

A. I want to ask a question.

Mr. Hokanson: I think he should answer the question if he is able to do so.

Q. (By Mr. Howard): Can you answer the question, Mr. Cross?

A. May I have the question again please?

(Question read by reporter.)

A. No, none at all.

Q. Did you check it?

A. Yes, it had been cleaned though.

Q. State whether or not you found any additional pumps connected with the lubricating oil system and heat exchangers when you arrived aboard the vessel in Manzanillo?

A. May I have that question again please?

(Question read by reporter.)

A. No.

Q. (By Mr. Howard) (Continuing) Connected with the line leading to the lubricating oil cooler?

A. There was only the one pump.

Mr. Hokanson: Before he answers will you read the question as Mr. Howard has rephrased it?

(Question read by reporter.)

(Deposition of N. A. Cross.)

A. The question is not quite clear.

Q. (By Mr. Howard): Did you find a standby fire pump hooked into the lubricating oil system?

A. There is one connected to it, but I was not looking for it.

Q. Do you know?

A. That is a shipboard installation. It hasn't anything to do with the engine.

Q. Do you know whether or not that pump was being used in connection with the circulation of lubricating oil? A. Apparently not.

Q. After these repairs that you have mentioned were completed at Manzanillo, did you remain aboard the vessel? A. Yes, I did.

Q. When it went out to sea?

A. Yes, I did.

Q. What was the destination of the vessel then?

A. Los Angeles.

Q. And at that time will you state if you know whether or not any standby pump was used in connection with the circulation of lubricating oil?

A. Yes, at a later date it was. [827]

Q. When?

A. On the night of Thursday, November 4th.

Q. Were you present when that was hooked into the system? A. No, I was not.

Q. Do you know the reason for it being hooked into the system?

A. Yes, the engine was running hot.

Q. Was that condition apparent to you?

(Deposition of N. A. Cross.)

A. Yes, it was.

Q. For how long had that condition existed?

A. I couldn't say, a very short time.

Q. Was it a matter of hours?

A. Yes, it was a matter of a few hours.

Q. Had you consulted with the chief engineer about the use of this standby fire pump?

A. No, I hadn't, not to my knowledge right now.

Q. Did you make any recommendation to the chief engineer with respect to the use of the pump?

A. I can't recall.

Q. You did know that it was hooked up?

A. Yes, I did.

Q. Did you make any recommendation against its being used?

A. I think I did but I am not sure of that. We had to cool the engine some way. I don't recall whether I objected to it or not.

Q. Mr. Cross, do you have a record or a recollection of [828] the pressures being maintained on the lubricating oil system and the salt water running through the lubricating oil cooler?

A. No, only that the oil would be between 20 and 25 pounds pressure and that the salt water wouldn't have been too high or I would have done something about it.

Q. Did you check the gauges during the operation of the engine?

A. Oh, no, I glanced at them. I don't write them down. If anything goes too far out of line I

(Deposition of N. A. Cross.)

adjust it, otherwise it's like you are driving your automobile, I let it go.

Q. Did you find any condition indicated by the gauges which would necessitate any adjustment in the pressure of either the lubricating oil or the salt water? A. No, I did not.

Q. In other words, the conditions were normal?

A. They might not have been normal but they were within a safe operating range.

Q. Did you see the entries made by the chief engineer in the log of the vessel as to the pressures maintained on the lubricating oil and the salt water circulating system? A. No, I didn't.

Q. Do you know of your own knowledge what those pressures were?

A. May I have the last few questions again?

(Questions and answers read by reporter.)

A. No, only that they were within a safe operating range. [829]

Q. You have stated that after your first trial you found that the valves were hitting the pistons and you changed the timing of the upper vertical shaft gears. How did the engine operate after that?

A. Very satisfactorily.

Q. Now, Mr. Cross, did you see what disposition was made of the gears that were replaced in the main engine of the Urania at Manzanillo? Do you know what disposition was made of those gears?

A. No, I don't.

Q. Do you know what the sea water temperature

(Deposition of N. A. Cross.)

was in and around Manzanillo?

A. Approximately 85 degrees sea water temperature.

Q. What effect would that have on the efficiency of the lubricating oil cooling system?

Mr. Hokanson: If he knows.

Mr. Howard: Q. If you know?

A. Are you assuming new coolers or old coolers?

Q. As you found the system at Manzanillo?

A. I had no way of knowing what the condition of them was at Manzanillo.

Q. Under normal conditions what effect would that have? A. It should have no effect.

Q. Assuming that the lubricating oil cooler had been recently cleaned and tested and put into good working condition, then would the temperature of sea water of 85 degrees [830] have any bearing on the efficiency of the cooling system?

A. May I have that question again, please?

(Question read by reporter.)

A. It would work better than it would if they were dirty.

Q. Would the temperature of the sea water have any bearing on the efficiency of the system?

A. No.

Q. Mr. Cross, in your opinion and based on your experience with these engines and with the actual examination that you made of the engine on your arrival in Manzanillo and the check that you made of the vertical shaft in the lathe ashore, would you

(Deposition of N. A. Cross.)

state whether you feel that the slight bend that you found in the vertical shaft would have had any effect on the meshing of the gears or the galling of the gears that you found?

A. No, I believe it was done when they took it out. When you get it back in place it would be straight, but in taking it out it is quite a job in an engine room. It is very easy to bend and the condition I found it, laying on the deck is why I wanted a check. It was laying under a support and had a bend in it. It was a very permanent bend. In the manner that it was setting it had a bend in it and it could have readily taken a set."

Mr. Hokanson: I move that the answer be stricken [831] as not responsive, since the witness speculates upon the time when the bend was put in this shaft and he does not respond to the question, which assumes that the shaft was in the engine when the bend was in it.

Mr. Howard: I submit, Your Honor, that the witness is stating a fact here and expresses an opinion.

The Court: It seems to me it is not a discussion that is directly suggested by the question. The answer is "No". The rest of it will be stricken. The "No" part of the answer will stand.

(Deposition of N. A. Cross.)

"Q. Mr. Cross, if that bend in the vertical shaft had existed before it was removed from the engine, in your opinion and from your experience and from your inspection of the engine and the gears, would you say that the bend would have had a bearing on the galling of the gears?

A. It couldn't have had the bend in the engine while it was running. It was in such a position that it was right at the bearing."

Mr. Hokanson: Again, Your Honor, the answer is not responsive.

Mr. Howard: The witness has been asked to express [832] an opinion.

The Court: The objection is overruled.

"Q. In other words it would have been impossible to run the engine with that bend in it?

A. The shaft couldn't have been in place with the bend in it.

Q. You have stated, Mr. Cross, that on the evening of November 4th it came to your attention that the engine was running hot. What if anything did you do then in connection with the further operation of the main engine of the tanker Urania?

A. I checked the pyrometer readings. They were satisfactory.

Q. What would those show?

A. They would show whether the firing tempera-

(Deposition of N. A. Cross.)

ture was too high.

Q. And you found them satisfactory?

A. They were found satisfactory.

Q. Did you do anything else, Mr. Cross?

A. No, I don't recall anything else I did at that time.

Q. Did the engine continue to run hot after that?

A. You mean after my inspection?

Q. After you had checked the pyrometer readings. A. Yes. [833]

Q. Will you state what transpired after that with respect to the further operation of the main engine of the tanker?

A. They couldn't keep the engine cool. The chief engineer had to put more water through the system to cool the engine.

Q. How is that done please?

A. By means of a fire pump.

Q. And will you describe how that fire pump was used, what did they do?

A. I don't follow your question there.

Q. You say that they put more water into the system by means of a fire pump. How was the fire pump employed, how was it hooked into the system?

A. It was piped right into the system there and just turned on, open the valve, that was it.

Q. Whereabouts was it hooked into the system please?

A. That I couldn't say. All I know it was on

(Deposition of N. A. Cross.)

the salt water side. I couldn't say anything more than that.

Q. Would you say that the use of that fire pump increased the pressures running through the system beyond safe operating pressures? A. No."

Mr. Hokanson: I move that that be stricken as involving the opinion of the witness, who has not been qualified to establish proper operating pressure of a [834] cooler, which is not an integral part of the engine with which this witness was concerned.

Mr. Howard: The witness has testified he was assembly foreman at the factory and had been for a number of years, if the Court please.

Mr. Hokanson: The witness is testifying with respect to a cooler or heat exchanger which it has already been established was furnished by another manufacturer and was placed on this engine and is not an integral part of the engine as put out by The Union Diesel Engine Company. I submit he is not competent to testify to what safe operating pressures are on an instrument with which his company is not concerned.

Mr. Howard: In response to that, if the Court please, the witness testified in establishing his qualifications he had supervised the assembly of the engine, the sub-assembly of all parts that go into the engine, testing of engine supplies, and all repair work that comes with it. I think on that and other

(Deposition of N. A. Cross.)

statements he has made establishing his qualifications he is eminently qualified to render an opinion on such a matter as this question involves.

Mr. Hokanson: One further objection, Your Honor. The question does not state the amount of pressure that this pump would deliver, and it is not established that [835] that was within the witness' knowledge. He is therefore incompetent to answer the question as stated.

The Court: I believe there is some bearing on that point later on, and I overrule——

Mr. Hokanson: Before proceeding, my objection also went to the form of the question, Your Honor. At that point you will notice I objected to the form of the question as leading. May I have Your Honor's ruling on that objection?

The Court: The objection is overruled.

"Q. (By Mr. Howard): What is the normal safe operating pressure through the system of this circulating water?

Q. (By Mr. Hokanson): If you know?

A. May I have the question again?

(Question read by reporter.)

A. It is safe to run your water pressure up to a hundred pounds.

Q. (By Mr. Howard): What pressure would be obtained through the system with the use of this fire pump that you referred to?

(Deposition of N. A. Cross.)

A. That I couldn't say. It is adjustable. [836]

Q. Would it be above 100 pounds?

A. I couldn't say that.

Mr. Hokanson: He has already stated that he doesn't know.

Mr. Howard: You can go ahead and answer that anyway.

A. I couldn't say. I had nothing to do with the making of the fire pump or operating it.

Q. In your opinion, did the use of the fire pump increase the circulation of water through the lubricating oil cooling system, increase the pressures beyond a safe operating level?

Mr. Hokanson: I object to the form of the question as leading.

Q. (By Mr. Howard): You may answer it.

A. What is the question?

(Question read by reporter.)

Mr. Hokanson: My objection should also include the objection that the witness has already answered that he doesn't know what pressure was applied and therefore is not competent to answer the question."

Mr. Hokanson: The same objection, Your Honor, in addition to the one registered as leading, the form of the question. [837]

The Court: The objection is overruled.

(Deposition of N. A. Cross.)

"Q. (By Mr. Howard): Now will you answer the question please?

A. It is the same. I didn't know what it was.

Q. From your experience with the operation of these Union Diesel engines, what step would you take to correct the condition that you found that you have referred to as the engine running hot on November 4th? [837-A]

A. Will you read that question again?

(Question read by reporter.)

A. You are assuming that it is in port or out at sea or where?

Q. At sea.

A. Try and get the water to flow through the system or slow the engine down.

Q. At what speed was the engine being operated on the evening of November 4th when it was running hot?

A. I don't recall exactly. It was between 300 and 325 r.p.m.

Q. Was it continued at the same speed after that? A. Yes, it was.

Q. For how long?

A. Until the gears began knocking.

Q. When did that occur, Mr. Cross?

A. I received a call at approximately four a.m. Friday, November 5th. It had happened prior to that.

Q. The engine being operated when you responded to that call? A. Yes, it was.

(Deposition of N. A. Cross.)

Q. At what speed?

A. I don't know for sure. I believe it was 325.

Q. And what action did you take when you responded to this call on four a.m. on November 5th?

A. I slowed the engine down immediately.

Q. To what speed? A. A slow speed.

Q. About how many revolutions would that be?

Q. (By Mr. Hokanson): If you remember?

A. Between 75 and a hundred r.p.m.

Q. (By Mr. Howard): And did you do anything else at that time?

A. In regards to the engine?

Q. With regard to the engine.

A. Just checked the governor, that is all.

Q. And what did you find on your check of the governor?

A. The governor was jumping up and down. That is an indication that your gears are going bad.

Mr. Hokanson: I object to the last part of his answer on the ground it is not responsive."

Mr. Hokanson: I move to strike the last part of his answer as not responsive.

Mr. Howard: I agree to that.

The Court: It is stricken.

Q. "By Mr. Howard): What does the jumping up and down of the governor indicate?

A. That the gears are going bad. That is one indication of it. [839]

(Deposition of N. A. Cross.)

Q. By the way, had you checked the operation of the gears after departure from Manzanillo?

A. Yes.

Q. What had you found as to the functioning of those gears? A. Very satisfactory.

Q. How often had you checked the gears?

A. At least once an hour while I was awake.

Q. At what speed had the engine been operating after your departure from Manzanillo?

A. 300 to 325 revolutions per minute.

Q. That would have been for a period of how long please? A. Approximately 36 hours.

Q. Well now Mr. Cross, can you go on from there to tell us what was done with respect to the operation of the main engine after you slowed it down to 75 to a hundred r.p.m.?

A. Well, I wanted to shut it down but it was dark out and the captain objected to a complete shutdown until daylight came. At approximately six thirty-five a.m. I shut the engine down, inspected the gears. The gears were very bad. The lubricating oil was a brownish color. I had the captain to ask the engineer to take a sample of the oil which they did. We flushed out the oil system, dumped all the oil overboard, took on new oil and we proceeded to run approximately one hour out of three approximately, just running the engine to keep headway, to keep our heading.

Q. At what speed were you running then? [840]

A. Very slow.

(Deposition of N. A. Cross.)

Q. The engine was running then?

A. Very slow.

Q. You continued to run the engine in that fashion until you arrived at Los Angeles, did you?

A. No, we did not. We were keeping headway until a tug met us.

Q. And can you state when that tug arrived?

A. She took us in tow approximately eight a.m. Saturday, November 6th.

Q. Did you change the lubricating oil at any other time before the arrival of the tug?

A. No, I did not.

Q. The oil had been changed at Manzanillo?

A. It had been changed at Manzanillo.

Q. And you flushed the oil out and changed the oil once after the engine had heated up?

A. Cleaned it and changed it after the gears had been put back.

Q. Did you remain aboard the vessel until it arrived at Los Angeles? A. I did.

Q. State whether you performed any services in connection with the further repair of the main engine of the tanker Urania after it arrived at Los Angeles? A. Yes.

Q. Describe what you did after arrival at Los Angeles?

A. We installed all new gears, that is, the upper and lower vertical shaft gears. We checked No. 7 and No. 8 main [841] bearings, inspected No. 6

(Deposition of N. A. Cross.)

connecting rod bearing, water tested the engine, installed a new governor crosshead.

Q. Why did you install a new governor crosshead?

A. It was worn. Do you wish me to go ahead and answer?

Q. Please.

A. Inspected the thrust bearings, checked the fuel injectors, cleaned all the lubricating oil system.

Q. What did you find on checking the thrust bearing? A. It was in very good condition.

Q. Will you go ahead now please?

A. Removed the three heat exchangers, sent them all out to be cleaned and checked.

Q. What did you find on checking the heat exchangers?

A. When I looked at them they had scale on them, all three of them.

Q. How much scale?

A. I couldn't say, that is a hard question to answer.

Q. Was it an abnormal amount?

A. There was more than should have been on them.

Mr. Hokanson: I object to the answer as not being responsive and being so vague as to be of no evidentiary value.

Q. (By Mr. Howard): I will ask you again, was there an abnormal quantity of scale on the heat

(Deposition of N. A. Cross.)

exchangers when you inspected them? [842]

Mr. Hokanson: I object again on the ground that the witness has not been qualified to state what an abnormal amount of scale is. The conditions have not been incorporated in the question which would make the answer of any evidentiary value.

Q. (By Mr. Howard): Now, Mr. Cross, during your period of employment with The Union Diesel Engine Company, had you had occasion before this particular incident to inspect and test heat exchangers?

A. Yes, inspect them and testing them on the engine, not a hydrostatic test.

Q. From that experience are you able to state whether the amount of scale that you found on the heat exchangers removed from the Urania was more than you normally found on such heat exchangers?''

Mr. Hokanson: May I make my objection at this point?

The Court: You may.

Mr. Hokanson: In the first place, he hasn't been qualified as an expert on heat exchangers. He hasn't stated in his answer what type of vessel the heat exchangers previously examined came from. He hasn't established how long those heat exchangers he had previously examined had been in operation. I submit [843] there is not incorporated in this

(Deposition of N. A. Cross.)

question sufficient basis for an answer by this witness that would be competent.

The Court: The objection is overruled.

"A. Yes, it was.

Q. (By Mr. Howard): Where was this scale found by you that you referred to, describe the location of it?

A. On the salt water side of the heat exchangers, located on the fins of the cooling unit.

Q. What effect would that have on the efficiency of the heat exchanger as a cooling unit?

Mr. Hokanson: If he knows.

Q. (By Mr. Howard): If you know?

A. It would make them less efficient.

Q. During this period of inspection of the Urania main engine at Los Angeles, did you check the alignment of the engine and thrust bearing?

A. I did.

Mr. Hokanson: The what?

Mr. Howard: Engine and thrust bearing.

A. I did.

Q. (By Mr. Howard): What condition did you find as to that check? [844]

A. The alignment was good.

Mr. Hokanson: I object to the answer as not being wholly responsive to the question which is in two parts."

(Deposition of N. A. Cross.)

Mr. Hokanson: I will waive the objection.

"Q. (By Mr. Howard): Did you check the lubricating oil leads into the cylinders while the tanker Urania was at Los Angeles? A. Yes, I did.

Q. What if anything did you find with respect to such parts?

A. There were several loose. One of them, No. 2 on the port side was leaking.

Q. Can you locate for us just at what point the terminal or lead was loose?

A. May I show you in the instruction book?

Q. Yes, you can refer to Claimant's Exhibit O. You are referring now to figure B in Claimant's Exhibit O? A. I am.

Q. And you are pointing to what?

A. Cylinder oil terminal.

Q. A cylinder oil terminal?

A. That is the one that was leaking (indicating). It was loose on its threads and the gasket was bad.

Q. Was that condition observable from inspection of the outside of the engine?

A. No, it was not.

Q. How did you determine it?

A. I did a hydrostatic test on the engine with the crankcase door removed for several hours and saw the leak of water into the inside of the engine.

Q. Do I understand you to mean that the leak then was of water down the cylinder?

A. That is correct.

(Deposition of N. A. Cross.)

Q. Did you find any other leaks of leads into the cylinders? A. Not leaking, no.

Q. Did you find any other leads loose?

A. Yes, I did.

Q. State where those loose leads were found.

A. I can't recall right now which ones there were?

Q. Could you recall how many there were?

A. Only approximately, three or four.

Q. What if anything was done to correct that condition?

A. No. 2, we put in a new gasket and tightened it and the others that were loose just tightened them.

Q. Will you describe for us the condition of that gasket you say was inspected at No. 2 cylinder?

A. It was galled a little, water had been leaking past it.

Q. What was done with respect to the scale on the heat exchangers that was found at Los Angeles or Long Beach?

Mr. Hokanson: If he knows. [846]

A. I sent the heat exchangers out to an agency that specializes in cleaning heat exchangers of that type and had them cleaned and checked.

Q. Were they returned to the vessel then?

A. They were returned to the vessel.

Q. Did you reinstall them?

A. I or one of my men did.

Q. How did the heat exchangers function after they were returned to the vessel?

A. Very well.

(Deposition of N. A. Cross.)

Q. What parts of the main engine were repaired or replaced at Los Angeles or Long Beach?

A. Well, there was new packings of the fuel injectors, new fuel pump discharge valves, one new set of lower vertical shaft gears, one set of upper vertical shaft gears, one governor crosshead assembly, new filter elements, new control station throttle disc. May I ask Mr. Newell a question please, I just want to try and clarify that disc.

Q. I think not, Mr. Cross.

A. May I have the instruction book? Friction disc is the real name of it.

Q. Anything else, Mr. Cross?

A. Various gaskets that had to do with reassemblying the engine. That is all I can recall at the present time.

Q. Now, you mentioned the governor crosshead assembly. Why would it be necessary to replace that unit? [847]

A. The bushings were worn in it. It seemed advisable to renew it.

Q. Would the wearing of the bushings in the governor crosshead assembly be related at all to the galling of the gears in the vertical shaft?

A. Possibly. I couldn't say for sure.

Q. Now handing you what has been marked for Identification as Claimant's Exhibits P-1 to P-13, will you examine those papers briefly. Can you state, Mr. Cross, whether Claimant's Exhibits P-1 to P-13 represent in part at least the parts and services

(Deposition of N. A. Cross.)

furnished to the tanker Urania at Manzanillo and Long Beach? A. Yes, they do.

Q. Having examined Exhibits P-1 through P-13, can you state whether all of the parts that are enumerated therein were necessary to effect the repairs necessary to the main engine of the tanker Urania?

Mr. Hokanson: I object to the question as not relevant."

Mr. Hokanson: I will waive that objection.

"A. In the repair, which way? Repairs at Long Beach, at Manzanillo or at a later date?

Q. (By Mr. Howard): The repairs at Manzanillo and Long Beach.

A. No, there are some here that were not used in Long Beach.

Q. Or Manzanillo? A. Or Manzanillo.

Q. Can you describe such item please?

A. On P-7, these were not used at either place.

Q. That is high pressure fuel lines, manifold to valves?

Mr. Hokanson: For the record, would you state specifically what items were not used at either place?

Mr. Howard: You will have an opportunity to cross-examine this witness, Counsel. You will have your chance.

Mr. Hokanson: I have the right. He is talking

(Deposition of N. A. Cross.)

about an exhibit, Counsel, and if he doesn't describe it accurately, the record won't show it.

Mr. Howard: I have just asked him the question as to what that particular exhibit shows.

Mr. Hokanson: He hasn't identified it.

Q. (By Mr. Howard): What exhibit are you referring to, Mr. Cross? A. P-7.

Q. And what items are shown on that exhibit?

A. 6 AB 6-3221, high pressure fuel line from manifold to valves.

Q. What is the amount of that?

A. In money or in number?

Q. In money? A. $54.00.

Q. Are there any other items in P-1 through P-13 that you [849] identify as not being furnished in connection with the repair of the main engine of the tanker Urania at Manzanillo or Long Beach?

A. On P-1 the third item, 1V61452-A vertical shaft base bearing bushing at $4.00. It was not used. I took it down. It was left on board as a spare.

Q. $4.00.

A. Yes. On P-8, item No. 8, fuel valve nozzle nut gaskets, P-6, it calls for twelve of them. I only used six of them. Six of them were left on board as spares. They are five cents apiece, total amount, sixty cents. Item No. 9 on P-8, there are six, V-6, 3314-A, fuel value plunger washers at twenty-nine cents each, total, $1.74. Only three of those were used.

(Deposition of N. A. Cross.)

Q. The rest were left aboard for spares?

A. Yes. I can't be sure of all these small gaskets here.

Q. To the best of your recollection?

A. To the best of my knowledge all the rest of them were used.

Q. Will you look again at P-1 through P-13, Mr. Cross, at those pages where reference is made to time and services performed by you and expenses.

Mr. Hokanson: Identify the page please.

A. P-3.

Q. (By Mr. Howard): Does P-3 extend to P-4? [850] A. Not by me.

Q. What does P-3 represent?

A. My services and expenses from October 25th to November 11th.

Q. And was all of this period of time actually involved in traveling to and from and while at Manzanillo?

A. Pardon me, I said November 25th before. I read this wrong. It was the 28th.

Q. The amount shown thereon for expenses, were those items actually incurred by you in connection with your travel? A. They were.

Q. And during the period you were at Manzanillo? A. They were.

Q. During the time that you were aboard the Urania enroute from Manzanillo to Los Angeles, did you talk on any occasion with Mr. Newell by radio telephone?

(Deposition of N. A. Cross.)

A. Will you read that question?

(Question read by reporter.)

A. Yes, on several occasions.

Q. Did you talk with anybody else by radio telephone?

A. Mr. Antippas, the Coast Guard and several fishing vessels. I was using the radio, not radio telephone straight.

Q. Referring to Claimant's Exhibit P-11, will you state what the first item on that document is, please? A. Services, my services. [851]

Q. For what period?

A. From November 12th to November 25th, 1948.

Q. What were you doing during that period?

A. I was either working on the Urania or traveling.

Q. Traveling where?

A. Back to Oakland, California.

Q. After the repairs had been completed on the Urania at Long Beach, did you perform further services, or further travel on the vessel?

A. Yes, I went from Long Beach to Manzanillo, Mexico.

Q. What was the reason for that?

A. My instructions from my company.

Q. What did you do during that period?

A. Supervised the running of the engine.

Q. Did you debark from the vessel at Manzanillo? A. That is correct.

Q. When did you return to Oakland?

(Deposition of N. A. Cross.)

A. 9:55 a.m., November 25th, 1948.

Q. How did the engine perform during this period of operation from Los Angeles down to Manzanillo? A. Very satisfactorily.

Q. Referring you to Claimant's Exhibit P-12, will you state what that is, please?

A. My own expenses in connection with the repairs on the Urania and traveling. [852]

Q. That is from Manzanillo back to Oakland?

A. No, part of them were in Long Beach, part of them were the repairs of the water coolers and oil coolers and there is an adjustment of a previous billing.

Q. How did the lubricating oil cooler function during the period that you were aboard the vessel on the voyage from Long Beach to Manzanillo?

A. Very satisfactorily. I never did have any trouble with keeping the oil cool at any time.

Q. On that particular voyage?

A. At any time.

Q. How was the running temperature of the engine during that period?

A. Very satisfactory.

Q. Now, Mr. Cross, as I understand, you said previously that when you received this call at four a.m. on November 5th while the vessel was at sea enroute from Manzanillo to Los Angeles, you checked the engine and found the governor to be jumping up and down? A. That is correct.

(Deposition of N. A. Cross.)

Q. Would that explain the necessity for replacing the governor crosshead assembly?

Mr. Hokanson: I object to the question as leading and on the further ground the matter has been already covered.

Mr. Howard: I will restate the question.

Q. Would that have any relation to the subsequent replacement of the governor crosshead assembly? [853]

Mr. Hokanson: If he knows, and the same objection."

The Court: Overruled.

"A. It could make it wear more, yes.

Q. Assuming that at that time on November 5th the timing gears were worn or galled, what effect would that have on the operation of the governor?

A. It would make the governor jump up and down.

Q. What effect would that have on the future serviceability of the governor assembly?

A. It would have a tendency to make the governor wear more, therefore it would need replacement sooner.

Q. From your first inspection of the main engine of the Urania upon arrival at Manzanillo, was there

(Deposition of N. A. Cross.)

any evidence that any loose part or other foreign material had dropped into the timing gears?

A. No.

Mr. Hokanson: I object to the question on the ground that he has testified that the gears had been dismantled at the time and he is therefore not competent to answer the question."

The Court: At this point we will take a five minute recess.

(Recess.)

Mr. Howard: We had stopped at line 4, page 35. There is an objection after that.

Mr. Hokanson: My objection stands. [854]

The Court: Are you objecting to the preceding question? I assume that you are.

Mr. Hokanson: Yes, Your Honor.

The Court: Overruled.

"Q. (By Mr. Howard): Is it possible for any part to drop into the timing gears on an engine while it is in operation?

A. Will you read that back to me?

(Question read by reporter.)

A. Yes, it is.

Q. If such a thing occurred would it cause a complete breakdown or would it result in gradual wear?

(Deposition of N. A. Cross.)

Mr. Hokanson: I object to the question as being too vague and not specific enough for anyone to answer."

Mr. Hokanson: Same objection.

The Court: Overruled.

"Q. What in your opinion would occur or transpire with reference to the future operation of the engine if such a thing occurred? [855]

Mr. Hokanson: The same objection."

The Court: Overruled.

"A. It would depend on what dropped in. Naturally if a piece of lead dropped in it wouldn't do much harm, if you dropped a bolt down there the engine would almost immediately stop.

Q. Did you have occasion to observe the manner in which the chief engineer was performing his duties during the period you were aboard the Urania?

A. Would you read that question please?

(Question read by reporter.)

A. I did.

Q. State what your impression was as to the

(Deposition of N. A. Cross.)
qualifications of the chief engineer to operate that type of engine?"

Mr. Hokanson: My objection is set forth, Your Honor.

(Basis of objection set forth herein page 857, line 6.)

Mr. Howard: I submit this witness is qualified to state his opinion as to the competency of the chief engineer based on his observations and his previous experience with Diesel engines, the experience of the [856] witness with Diesel engines and their operation.

The Court: The objection is overruled.

"A. He was very competent.

Mr. Hokanson: I will for the record object to the question and the answer on the ground that this witness has previously testified that he had never been to sea, holds no license as a marine engineer and he is therefore not qualifid to pass upon the qualifications of the chief engineer.

Mr. Howard: You may cross-examine.

(Recess.)

Cross-Examination

By Mr. Hokanson:

Q. Mr. Cross, have you been away from Oakland recently? A. Yes, I have.

Q. When did you return?

A. Last Friday night I believe it was.

(Deposition of N. A. Cross.)

Q. You discussed your testimony with Mr. S. W. Newell? A. Yes, I have.

Q. And you read his deposition?

A. I did.

Q. You discussed this matter with Mr. Clark, the attorney for the Union Diesel Engine Company?

A. Yes.

Q. Have you discussed it with Mr. Antippas?

A. I have not. [857]

Q. Did you at any time prior to today discuss the damage to the main engine of the Urania with Mr. Antippas?

A. Yes, when we were in Long Beach.

Q. What was the substance of your discussion with him?

A. He wanted to know what was the cause of the breakdown out of Manzanillo. At first I didn't know what it was and later events seemed to bear out that it had been the sea water entering into the lubricating oil by way of the heat exchanger.

Q. That was your opinion?

A. Yes, it was.

Q. You told that to Mr. Antippas?

A. I did.

Q. Did Mr. Antippas ever advise that this matter might result in litigation?

A. He might have, I don't recall. It was not discussed at any length. He might have mentioned it. I don't recall right now.

Q. You had some communications with him by

(Deposition of N. A. Cross.)

radio while you were aboard the Urania, did you not? A. I did.

Q. What was the nature of those communications?

A. Well, before we had the breakdown he was just wondering how the engine was making out, then we had the breakdown and he wanted to know what it was. I didn't know right offhand and I advised him to have a man at the dock to meet us to take a sample—pardon me, take an analysis of this oil [858] after the breakdown. In another telephone conversation he advised me that a tug was going to pick us up, and other conversations were to the effect, where were we going to dock and who was going to meet me and who was going to be there.

Q. Do you know what was done with that sample of oil that you mentioned?

A. It was lost.

Q. Who took it?

A. Who took it from the engine?

Q. Yes. A. I did.

Q. What did you do with it?

A. I gave it to the chief engineer.

Q. It was thereafter lost?

A. Yes, it was.

Q. Did you have anything to do with the other engineers aboard the Urania besides the chief engineer?

A. Yes, they worked with me in the repair of the vessel.

(Deposition of N. A. Cross.)

Q. Now, Mr. Howard asked you what effect would something dropped into the engine have in your opinion. Isn't it true that the effect of such an event would depend entirely upon the nature of the event?

A. The nature of the event or the nature of the piece being dropped into it?

Q. Well, either?

A. Yes, the nature of the piece being dropped into it. If it was something soft such as paper naturally it wouldn't do [859] any harm.

Q. So that it is impossible if you didn't actually observe a piece dropping in there to know what the result would be? A. That is true.

Q. Now, when you first went aboard the Urania, the gears had been removed from the engine, that is the timing gears, and were on the deck?

A. That is correct.

Q. And was the vertical shaft still in its bearings?

A. No, the vertical shaft was out. You have to take the vertical shaft out in order to get the timing gears out.

Q. And you took the shaft ashore and found what you describe as a bend of one-eighth of an inch at the base of it?

A. Yes, that is right.

Q. How did you determine the amount of the bend?

A. I had it chucked in a lathe and I first started

(Deposition of N. A. Cross.)

out to find out how much it was off. I just approximated an eighth of an inch by holding a piece of chalk against it while the lathe was running, then I trued it up to a dial indicator.

Q. It was apparent to you, was it, when you saw it on the vessel that it was bent?

A. No, you couldn't see the bend in it. It was a matter of—it was laying on the deck and that made me suspicious of it. It was blocked in such a way that it could very easily have been bent. Somebody could have stepped on it or [860] just its own weight.

Q. What is the diameter of the shaft?

A. It is various diameters. The main diameter is one and 15/16 inches.

Q. Is that a hollow shaft or is it a solid piece?

A. No, it is a solid shaft.

Q. What is its length?

A. Approximately eight foot.

Q. You don't know of your own knowledge how that bend developed in the shaft, do you?

A. No.

Q. Now, when you first inspected the gears, did you discuss or talk about the trouble with the chief engineer?

A. Oh, I am sure I did. I don't recall the exact conversation with him. Naturally he doesn't speak English and we had to have the captain, Captain Bies, as an interpreter.

Q. Did he act as an interpreter for you?

(Deposition of N. A. Cross.)

A. Yes.

Q. Did you inquire into the history of the engine's performance prior to the breakdown?

A. I did.

Q. What was the history?

A. Well, he said the engine had been running quite hot, also that the gears had gone out very suddenly. He expressed an opinion which I can't recall right now—yes, thought the gears went out. He was very satisfied with the engine in general. That is about all.

Q. Did you inspect the log entries? [861]

A. No, I did not.

Q. Have you ever looked at the engine log?

A. At no time, no.

Q. Did he mention any previous stopping of the engine?

A. Do you mean prior to the——

Q. Prior to the breakdown?

A. I don't recall if he did or not.

Q. Did you ask him?

A. No, I did not.

Q. What was his opinion as to the cause?

A. That I cannot recall.

Q. Did you undertake to determine the cause of the galling of these gears before you installed the new gears?

A. Yes, I checked the alignment to make sure that the dowels were in place, and they couldn't have been out of place, they were still in place.

(Deposition of N. A. Cross.)

I checked the oil line that leads to the gears, but it had already been cleaned so I couldn't tell.

Q. What had been cleaned?

A. It had been cleaned already, so I was led to believe that it was plugged prior to that time, but I had no way of knowing.

Q. Did you say plugged?

A. Stopped up, that was an assumption on my part.

Q. Did the chief engineer express a similar opinion?

A. No, I can't recall. He did express that it was oil. I [862] can remember that much because he had changed the oil line at sea after it had started to go out. He had done something. I think he put an additional one in or opened a hole or something.

Q. Do you remember where?

A. No, I don't recall where that was.

Q. You don't recall when that was?

A. No.

Q. Did he tell you he had either changed or——

A. He had done something to the oil line, I can't recall exactly what he had done.

Q. Now, did you send some telegrams when you were at Manzanillo? A. Yes, I did.

Q. Were you with the master of the vessel when these telegrams were sent?

A. I believe I was. I don't know which one you are referring to or any certain ones. I believe I

(Deposition of N. A. Cross.)

was when any that pertained to the work on the engine were sent.

Q. Did you know the contents of the telegram that the master sent Mr. Antippas?

A. I have no way of knowing how many he sent to Mr. Antippas.

Q. With respect to the cause of the breakdown?

A. Yes.

Q. Isn't it true that he stated in a telegram to Mr. Antippas that it appeared that an oil line had clogged causing the [863] gears to gall?

A. That is correct.

Q. And as a result of that information you were suspicious of the supply of lubrication to the gears?

A. No. He sent that telegram on my saying that it was my assumption that it had been plugged. It was after that.

Q. You had installed additional lubricating lines or a line to the gears?

A. Yes, I had installed a line to the gears, an additional one.

Q. And did that supplement the line that was already running to those gears?

A. They were both on there after I left Manzanillo.

Q. Was the one that you installed larger than the original line? A. Yes, sir, it was.

Q. And how did the line that you installed lubricate the gears?

A. By direct flow of oil to the gears.

(Deposition of N. A. Cross.)

Q. When you came aboard you found the oil had been removed? A. That is right.

Q. Was there any oil in the bed, any of the low spots of the bed?

A. I didn't check to see if there was any or not.

Q. Did you check the day tank to see whether there was any oil? [864]

A. There was one other day tank. I wouldn't say it was perfectly dry, but there was none in the sight glass.

Q. What further inspection of the engine did you make beyond ascertaining that the oil had been removed and that the gears had been dismantled?

A. You mean the engine as a whole or just pertaining to the gears?

Q. Yes, the engine as a whole?

A. Checked the fuel controls and the fuel pump setting, the control station.

Q. Do you know what method was used to remove the oil that had been removed prior to your arrival on board?

A. No, I had no way of knowing.

Q. Did you ask the chief engineer what steps had been taken to remove such iron filings or pieces that might have been in the oil as a result of the previous galling?

Mr. Howard: That is objected to. There is no testimony of any iron filings."

(Deposition of N. A. Cross.)

Mr. Howard: I will waive that objection.

"Q. (By Mr. Hokanson): Well, Mr. Cross, you examined the gears? A. Yes. [865]

Q. And could you describe in somewhat more detail than you have given us the nature of the galling?

A. It is very hard to describe something like that. The gears were just plain worn out.

Q. Were they worn, uniformly?

A. No, that particular type of gear does not wear uniformly, quite uniformly, yes, but they wear according to the number of cylinders on the engine and timing on the engine, not dead uniform.

Q. There was galling even into the soft core, wasn't there?

A. Oh, it was all the way down to the soft core.

Q. And from your observation considerable metal had been cut off those gears?

A. That is correct.

Q. And that metal would go into the lubricating oil, would it not? A. It would be.

Q. You did not ascertain what had been done to flush that oil out of the system?

A. Yes, I did.

Q. And foreign particles?

A. Yes, I did. I didn't ascertain how they got it out. I made certain that it had been washed out. The foreman had some laborer remove the——

(Deposition of N. A. Cross.)

Q. I didn't understand your last answer.

Perhaps to shorten the record would you read it back to me?

(Answer read by reporter.) [866]

Q. (By Mr. Hokanson): Was it at your request that the whole system was flushed out?

A. It had been done prior to the time of my arrival.

Q. So you don't know what actually was done by way of washing it out of your own knowledge?

A. No, only that when I got on board it was clean.

Q. To the extent that you examined the engine it was clean? A. That is correct.

Q. Did you inspect all of the lubricating oil lines that serve the entire engine?

A. No, I did not.

Q. Now, the upper helical gears were not badly worn, is that correct?

A. That is correct.

Q. Were they worn at all?

A. There was a certain amount of wear marks on the gears, yes, sir.

Q. Was the wearing abnormal on the upper gears? A. No, it was not.

Q. And it was only the lower gears then that were galled? A. That is right.

Q. Did you examine the second set of gears that wore out? A. Yes, I did.

(Deposition of N. A. Cross.)

Q. Were both sets worn out, the upper and lower I have reference to?

A. Yes, they were.

Q. With respect to the second set of gears, was there any difference between the amount of galling on the upper gears [867] as contrasted with the lower gears?

A. Yes, the upper gears were not near as bad as the lower gears.

Q. And what was the character of the galling on the second set of gears that wore out?

A. Practically the same, looking at the first set, you couldn't distinguish the difference between the first set that wore out and the second set.

Q. They were not regularly, uniformly worn out? A. That is right.

Q. The wearing was erratic, was it not?

A. No, there was just a—may I clear that up? May I clear up the wearing on those gears? Every tooth wears but it wears in such a way that some of the teeth are worn a little more than the other one and I don't know whether you could measure it but you can see it if you look at it closely, a worn out gear of that nature.

Q. You have reference now to these particular gears? A. Yes, I do.

Q. Did you examine the thrust bearings at Long Beach? A. I did.

Q. Were any thrust bearings replaced?

A. No, they were not. Oh, pardon me, you are

(Deposition of N. A. Cross.)

speaking of the thrust bearing of the main engine or of the vertical shaft. [868]

Q. Of the vertical shaft.

A. Yes, two of them were replaced.

Q. You said previously they were not worn?

A. I was talking before of the main bearing thrust bearing which is a common way of expressing a thrust bearing.

Q. Were the thrust bearings on the vertical shaft worn? A. Yes, they were.

Q. Requiring replacement? A. Yes.

Q. Those are ball bearings?

A. Roller bearings.

Q. How were they worn, what was the nature of the wear?

A. A pitting on the rollers of the bearing and they could perhaps could have been used for some time yet, but seeing as we were close to a supply where new ones could be obtained it was advisable to put new ones in.

Q. What is the number of teeth on the lower helical timing gears?

Q. (By Mr. Howard): If you know?

A. I do not know.

Q. (By Mr. Hokanson): What is the normal pitch, if you know?

A. I couldn't answer that either.

Q. Do you know what the helix angle is on those gears? A. No, I don't.

(Deposition of N. A. Cross.)

Q. Do you know what the diametrical pitch is?

A. No, I do not.

Q. Was there any evidence of flaking off of these gears?

A. How do you describe flaking on a gear?

Q. I am asking you if you can answer the question?

A. I can't answer that question. I don't understand it.

Q. What was the color of the gears?

Mr. Howard: When, Counsel, when are you referring to?

Q. (By Mr. Hokanson): The gears that you examined on the vessel when you arrived.

Mr. Howard: At Manzanillo?

Mr. Hokanson: Yes.

A. The color of steel.

Q. Normal color?

A. Normal color of steel.

Q. What was the color of the gears that were removed at Long Beach? A. The same.

Q. Would you describe to us how you installed the lower helical gears on the shaft at Manzanillo?

A. You mean the operation of putting all the gears in or just putting the gear on the shaft?

Q. In putting them on so they would mesh?

A. You put the vertical shaft and the lower vertical shaft gear into the engine to the lower vertical shaft base bearing. I lined the vertical shaft up through the upper vertical shaft bearing. I as-

(Deposition of N. A. Cross.)

sembled the intermediate bracket assembly, [870] assembled it onto the engine, checked the runout of it by turning the engine over and feeling the backlash of the gear.

Q. How did you establish the alignment, visually?

A. By feel. You can do it with feeler gauges, straight edges. It depends on which alignment you mean and how.

Q. The alignment of the gears on the vertical shaft?

A. It is self-aligning in that the bracket is placed in a set position, I mean, pardon me, that would be all right. The vertical shaft base bearing is doweled at the base. Alignment therefore cannot change unless the dowels are moved or the bracket is loosened or one of the thrust bearings was particularly worn out.

Q. Was there any wear on the thrust bearing when you examined it at Manzanillo?

A. Yes, the same amount that I had found at Long Beach.

Q. Did you replace it there?

A. No, I didn't have the replacement there.

Mr. Howard: What thrust bearing are you talking about?

Mr. Hokanson: The vertical shaft thrust bearing.

Q. (By Mr. Hokanson): So that the method that you used in aligning these gears involved cer-

(Deposition of N. A. Cross.)

tain assumptions namely that the wearing on the thrust bearing was not sufficient to cause it to be out of alignment and that the shaft was true and that the dowels had not been enlarged in [871] any way?

A. No more so than a new engine built at the factory, the same as we do at the factory. Of course, I can't elaborate on all the ways we do align a gear. If I had an engine here I could show you definitely exactly how it is done, but I can't elaborate on every detail. It is done by the same method as I do it in the shop or instruct my men to do it in the shop.

Q. You didn't blue the teeth in installing the gears, did you?

A. Yes, I wiped it. I used white lead in place of bluing.

Q. White lead? A. Yes.

Q. Do you know who cut the set of gears that you installed?

A. I believe it was Johnson Gear Company—pardon me, I don't know for sure.

Q. Do you know how they were checked?

A. No, I am sorry, I do not.

Q. Did you receive any inspection report on the gears that you installed?

A. No, the gears come into the shop under a specified inspection from the gear people. They may have come in with a batch of a hundred others. All have to pass that inspection at the gear company."

(Deposition of N. A. Cross.)

Mr. Hokanson: I move to strike that last as hearsay. [872]

Mr. Howard: I have no objection.

The Court: It is stricken.

"Q. Do you know why the damaged gears were not saved in this case? A. No, I do not.

Q. Do you know what was done with them?

A. Let me change my last answer, they were saved until the time I hit Los Angeles, both sets.

Q. You kept them?

A. On board the ship.

Mr. Howard: Counsel, for the record I will state that we are making an effort to obtain the gears for the trial.

The Witness: The gears were safe as far as I know. Mr. Pike inspected the gears in Long Beach when I arrived there. After that I had no worry of what happened to the gears.

Q. (By Mr. Hokanson): Other than the inspection that you already testified to, you made no further effort to determine the cause or failure of the first set of gears before installing the second set?

A. No, I believe that was sufficient.

Q. Did you inspect the camshaft for binds at Manzanillo?

A. Only to the extent of turning it before I made my inspection of the upper vertical shaft gears.

(Deposition of N. A. Cross.)

Q. Were there any filters in the engine when you arrived at Manzanillo?

A. I couldn't say whether they were in when I arrived there or put in after I arrived. I know there were new filters in.

Q. Did you see the old ones?

A. No, I did not.

Q. Do you know what was done with them?

A. No, I do not.

Q. Did you see the oil that was put into the engine at Manzanillo after the gears were installed?

A. I saw it after it was put into the engine, yes.

Q. At what point did you examine the oil?

A. Only to the extent of looking at it, that is all.

Q. You don't know where it came from?

A. No, I do not.

Q. Do you know what kind of oil it was?

A. No, I do not.

Q. You talked with Mr. Newell by telephone while you were at Manzanillo, did you not?

A. I can't recall whether I did or not. Possibly I did. Most likely I did.

Q. Mr. Newell testified that you discussed the possible causes of the galling of these gears and stated that you had determined that the oil was brown and you both concluded that would be caused by water, do you remember that conversation?

A. Yes, that was after I left Manzanillo, after

(Deposition of N. A. Cross.)

the second breakdown. [874]

Q. When did you leave Manzanillo?

A. Approximately five p.m., November 3rd.

Q. You had a telephone conversation with him on November 3rd, didn't you, of extended duration?

A. That I couldn't say for sure.

Q. When did you first know that the oil was brown?

A. Approximately 6:35 a.m., Friday, November 5th.

Q. And not before that time?

A. No, I did not.

Q. Do you remember sending a telegram dated November 1st to your company from Manzanillo?

A. I don't recall the exact date of a telegram. I know of one telegram I sent from Manzanillo, yes.

Q. I will ask you, Mr. Cross, whether you sent the following telegram on November 1st to Unigaus, which I presume is the cable address of your company in Oakland: "Have Advised Owners of Urania When Vessel Leaves Manzanillo Stop Some Port West Coast USA for the Services of an Additional Serviceman May Be Made Available Stop Appearance of General Workmanship Done in Seattle Makes It Advisable Period Stop All Air Water Lubricating Oil Tubing Should Be Replaced Stop Bearings Liners Pistons Etc Should Have Very Close Inspection Stop Will Advise You of Their

(Deposition of N. A. Cross.)

Decision Also Date of Sailing and Arrival in Port." Did you send that telegram? A. I did.

Q. Why did you advise the owners to go to another port on [875] the West Coast of the United States where the services of an additional man would be made available?

A. Manzanillo hasn't the facilities for the work I was doing. I didn't have the tools or the equipment to do the work with. The temperature was 120 to 130 degrees in the engine room. I thought it advisable to go where the work could be accomplished.

Q. You were not then certain of the effectiveness of the repairs that you had made at Manzanillo?

A. Yes, I was. I didn't think about that. I didn't like the looks of the rest of the engine, the tubing and that. I had nothing to do with any of the tubing on the rest of the cylinders. It was badly kinked. The control station didn't work properly. The fuel was not set to my satisfaction after I had set them there. I wanted to take out the nozzles. I didn't have the facilities there to do the work. I would never have sailed out of there if I figured the gears were going to go out of there. That would only be risking my neck. It wouldn't be very sensible.

Q. You felt then that there was some further deficiency in this engine that needed attention, is that correct? A. That is correct.

Q. But you were completely satisfied that you

(Deposition of N. A. Cross.)

had made an effective repair of the immediate danger? A. That is correct. [876]

Q. What was the appearance of the general workmanship that caused you to advise them to put into a West Coast port?

A. The tubing being badly kinked, the fuel controls not set, the engine had been running hot. I attributed that to the fact that maybe the fuel was not set properly. The fuel nozzles needed work.

Q. Was all the tubing kinked?

A. Not all of it, but a very good portion of it was.

Q. As to air, water and lubricating oil?

A. That is when I am speaking of tubing, that is copper tubing, not the piping on the engine.

Q. You say all air, water, lubricating oil tubing?

A. Not all, I didn't say all of it, that it all should be gone over and those that were badly kinked renewed.

Q. You didn't know what was causing this engine to overheat, is that right?

A. No, I didn't.

Q. Where was it overheating?

A. The water temperature was going too high.

Q. The water temperature?

A. That is right.

Q. In the jackets? A. Yes.

Q. But the exhaust temperatures were normal, weren't they? A. That is correct.

Q. The lubricating oil temperature was all right,

(Deposition of N. A. Cross.)

wasn't it? A. It was all right.

Q. You never had any trouble with that?

A. No. [877]

Q. Why did you think the bearings, liners and pistons should have a very close inspection?

A. Whenever I see work that has a bad appearance on the external of an engine I like to see the inside to see if the same workmanship has been done on the inside of an engine.

Q. Did this telegram reflect any lack of confidence on your part in the ability of these engineers properly to operate that engine and to maintain it?

A. It was not meant to.

Q. You did accompany the vessel after complete repairs had been made at Los Angeles back to Manzanillo, didn't you? A. That is correct.

Q. And you have stated that what you did was supervise the operation of the engine on that voyage?

A. Yes, I meant it in a way that we were satisfied that repairs had been effected.

Q. Why then was it necessary to go with the vessel after the repairs had been completed?

A. That was my orders.

Q. From whom?

A. The Union Diesel Engine Company.

Q. And you brought along a spare set of lower and upper helical timing gears, didn't you?

A. No, I believe they picked the spare set up in Manzanillo. The lower ones; I may have had

(Deposition of N. A. Cross.)

an upper set. There was a [878] set shipped to the vessel prior to my departure from Oakland. They had become lost in transit and they were going to keep them on board as spares and they are still on board as spares to this day, to my knowledge.

Q. Were you satisfied that the repairs made in Los Angeles were final and complete?

A. I am.

Q. Were you at the time you left the vessel for Manzanillo after November 11th?

A. I was.

Q. Did you so advise your company?

A. I believe I did. I couldn't say for sure whether I did or not. I sent in a report daily. I was quite confident that my report contained information that the engine was in good working order.

Q. On the evening of November 4th you opened up the engine to look at the timing gears, didn't you? A. I believe I did at nine p.m.

Q. And they were in good order at that time?

A. They were.

Q. The engine operated normally at that time?

A. To my knowledge it was. I believe that is about the time it started to run warm.

Q. And about 0350 you received a call that the engine was knocking?

A. Approximately four a.m. I received a call.

Q. Seven hours later? [879]

A. No, it was almost immediately.

Q. I have reference to the time interval between

(Deposition of N. A. Cross.)

your last inspection of the gears and the time you received this call?

A. Oh, yes, that is correct.

Q. And it was at about nine p.m. or 2100 on November 4th that the auxiliary standby pump was put into use?

A. As much as I recall. I couldn't say for sure.

Q. Did you recommend its use?

A. I did not.

Q. Did you know it was being used?

A. I did.

Q. You had no trouble maintaining the temperature of the lubricating oil? A. No.

Q. And prior to that time it had not been put into use, prior to 2100 on November 4th, to the best of your recollection, the auxiliary standby pump had not been used? A. That is correct.

Q. When you responded to the call that you received at four a.m. on the morning of November 5th, did you open up the engine to inspect the timing gears?

A. Not right away. I slowed it down immediately.

Q. Why did you do that?

A. Why did I slow it down?

Q. Yes.

A. It was hammering very badly.

Q. Did you know what the cause of that hammering was?

A. I was quite sure I did. [880]

(Deposition of N. A. Cross.)

Q. Was it your desire to stop the engine immediately? A. If I recollect, it was.

Q. When did you open up the engine to inspect the gears thereafter?

A. Approximately 6:35 a.m., November 5th.

Q. From your examination at that time you determined that the gears were galled again?

A. That is correct.

Q. And from that time until you arrived at Los Angeles, how many hours was the engine running?

A. It was just a matter of perhaps four to eight hours of very light running.

Q. Did you cause the oil to be removed at about 6:35 a.m., November 5th?

A. Yes, or shortly thereafter.

Q. And new lubricating oil put in?

A. That is right.

Q. Did you ask the chief engineer whether he had ever employed that standby pump on the voyage down before you came aboard at Manzanillo?

A. I believe I did. I couldn't say for sure.

Q. If you can't be sure you don't remember what his answer was? A. That is right.

Q. On the basis of your acquaintance with the performance of Union Diesel engines of that type, what could cause the vacillation of the r.p.m. upward and downward without the [881] actual use of the throttle to cause the change?"

Mr. Howard: I waive the objection.

"A. I have never seen it happen in a Union

(Deposition of N. A. Cross.)

engine with the setup that was on board the Urania, that particular type of installation.

Q. (By Mr. Hokanson): Not having seen it happen, you wouldn't be able to furnish us with a possible cause of that condition?

A. On other types of engine, but on this type of engine if somebody was playing with the engine I could see it happening, but not otherwise, no.

Q. By playing with the engine you mean what?

A. Changing adjustments while it was running.

Q. Now, turning for a moment to these items that you have been testifying about, you have an item, new packing fuel injecton. Is that related to this breakdown?

A. The packing of the injectors?

Q. Yes. A. No, not directly, no.

Q. That was something that was independent of the gear failure? A. That is correct.

Q. What about two new fuel pump disc valves?

A. Check valves?

Q. Perhaps it is check, I got it as disc valve.

A. That was independent of the breakdown.

Q. You are sure that the governor crosshead assembly was caused by this gear failure?

A. No, I am not sure.

Q. What about new control station friction disc?

A. That was not caused by the breakdown, no.

Q. You replaced some lubricating oil manifold branch pipes, why was it necessary to replace them?

(Deposition of N. A. Cross.)

A. I don't recall right now. They may have been changed when we took them off to inspect the oil system or they may have become lost. I couldn't say right now.

Q. Could some defect in those pipes affect the amount of lubrication flowing to the gears that were galled?

A. No, it is not on a direct route to the gears, it is on a branch line.

Q. Does it in any manner affect the circulation of oil throughout the gears?

A. No, only to the bearing it is going to.

Q. Did you ask the chief engineer whether he had replaced the filters at Manzanillo?

A. I couldn't say for sure. I am sure I did. I know I wouldn't have left without making certain there were filters in there. [883]

Q. Did you ask him what the condition of the ones that had been discarded was?

A. Not that I recall.

Q. That would show dirt or extraneous matter, wouldn't it, on inspection of the filters?

A. Yes.

Q. Could kinking in your lubricating oil lines affect the amount of lubrication furnished to the various parts of the engine? A. Yes.

Q. I am interested, Mr. Cross, in knowing why you put in this additional line to the lower helical gears. You had established that the original lines were clean.

(Deposition of N. A. Cross.)

A. That is basic instructions from the factory on this model engine, whenever we are working in the vicinity of that gear to put an additional line into it.

Q. Is that because the company regards the original system of being doubtful sufficiency to lubricate those gears?

A. No, there has been lots of these engines out in service for years. We found that the capacity of the pump is much larger and we can use the additional oil. We never found a part to be harmed by having too much oil to it. It is standard practice on that model engine.

Q. That is merely a safety factor that you apply in putting on an additional line?

A. Yes.

Q. What is the lubricating oil capacity of that type of Union Diesel Engine?

A. The supply of the day tank you mean? [884]

Q. Yes. A. I have no way of knowing.

Q. In terms of gallons?

A. I know it is more than adequate for the engine, but I couldn't say exactly the number of gallons or anywheres near it.

Q. Did you make any new model changes on the governor at Manzanillo?

A. No, I did not.

Q. Aren't there certain auxiliary pumps driven by the helical gears or the vertical shaft?

A. By the vertical shaft, there are the lubri-

(Deposition of N. A. Cross.)

cating oil pumps, both the pressure pump and the sump pump.

Q. Anything else?

A. The governor. That is all.

Q. Did you examine all those to see if any weight or pressure was required to drive those pumps and the governor, any undue weight?

A. The governor wouldn't take any additional. It is not gear driven. It is an integral part of the shaft when assembled. The pump I did not.

Q. Is timing an engine a function that you perform at the factory?

A. What kind of timing?

Q. Timing the engine so that the valves are synchronized with the cycle of the engine?

A. That is correct.

Q. Did you have any particular trouble in timing this engine? A. I did. [885]

Q. Why?

A. The flywheel had been marked wrong, or a wrong flywheel of a different model had been put on the engine and I had timed it to the marks on the flywheel.

Q. Did you use an indicator?

A. Not in the sense of meaning an instrument. We have one with a pointer that we use as an indicator, yes.

Q. After you had timed the engine to your satisfaction, you then ran the engine full ahead, didn't you? A. That is right.

(Deposition of N. A. Cross.)

Q. Then you found it to be acting erratically, is that correct? A. Yes.

Q. In what manner was its actions erratic?

A. The valves were hitting the pistons.

Q. That is an abnormal condition, isn't it?

A. It is.

Q. Do you know why that was true in this case?

A. Because the markings of the flywheel being wrong and timed to those marks.

Q. The markings on the flywheel were wrong?

A. That is correct.

Q. How did you determine that?

A. Sent for some blueprints from the shop, sent in the model number of the engine and they sent me down the blueprint. I checked back on the flywheel, checked it off and they had it marked wrong. [886]

Q. And this was done while you were at Manzanillo?

A. No, that was done when I pulled into Long Beach.

Q. Do I understand you to say then that you had the wrong information with respect to the markings on the flywheel when you went down there?

A. The flywheel was marked wrong.

Q. By the factory?

A. Presumably, I wouldn't say for sure.

Q. When you get that condition of pistons hit-

(Deposition of N. A. Cross.)

ting the valves, if that obtained for any period it could cause serious damage to the engine, couldn't it?

A. If it busted off a rocker arm, if it hit very hard. This was not a direct hit. It was a carryover of the valve from the speed, leaving the rocker arm.

Q. It gives you a backlash throughout your camshaft, doesn't it?

A. To a certain extent, yes.

Q. You found some difficulty with your fuel injection valves?

A. No, I took them apart, examined them, repacked them, checked them. That was in Long Beach I did this work.

Q. Do you know what the figures in terms of degrees are on the timing of this engine with reference to the fuel valves?

A. I can look it up in the instruction book. I think it is fifteen degrees. It may be ten. There are quite a number [887] of them. Each model has a different number of degrees.

Q. You are referring now to Exhibit O, the manual for use with this type of engine?

A. Yes. Twelve degrees before top center.

Q. Twelve degrees before top center?

A. Yes.

Q. What about the exhaust valves?

A. Forty degrees. I don't know on this engine whether this book is correct for that engine or

(Deposition of N. A. Cross.)

not. You will have to ask Mr. Newell on that.

Q. That is the manual put out for this engine?

A. Perhaps it is, but this one particular engine I couldn't be sure about without checking on our drawings in the shop.

Q. Why not?

A. This is the first of our series of engines. I am not dead sure that this is correct for that engine, on that particular engine.

Q. What about the inlet valves?

A. That would be the same thing. I couldn't be sure. I would have to check my drawings.

Q. How did you time the camshaft?

A. Where, in Manzanillo or——?

Q. Manzanillo.

A. I timed it the first time to the markings on the flywheel. When I found that was wrong I dropped it back two [888] teeth and set it there.

Q. Isn't the timing of the fuel a very critical part of timing the engine? A. It is.

Q. And that is practically impossible to do without the use of an indicator, isn't it?

A. I would say it was not possible to do without an indicator.

Q. Was not possible?

A. Not to do it correctly.

Q. Did you have an indicator? A. I did.

Q. What kind of an indicator?

A. The one supplied by the factory.

Q. What does an indicator show?

(Deposition of N. A. Cross.)

A. I am afraid you are confused on that. Are you talking about indicator cards of an engine or an indicator for timing or what?

Q. For timing?

A. It shows the amount of lift on the fuel and the timing of the fuel.

Q. Does it show loss of compression by leakage?

A. No, that is a different type of indicator.

Q. Will the late closing of an exhaust valve or the early opening of the inlet valve show by the indicator that you used?

A. No, it does not. You are speaking of an indicator that you take pressures on an engine with. You are talking about [889] that kind. You have been reading something somewhere. You are altogether wrong on an indicator of that type. It is altogether something different.

Q. Mr. Cross, I am not testifing here. I am merely trying to elicit some answers.

A. I am just trying to clear that up.

Q. What is the method of purifying the oil on the main engine of the Urania?

A. There are three different types of purifying oil, one is when it goes out of the engine into a strainer, a basket type strainer. The oil goes through a metal edge filter and then you can bypass a certain portion of the oil through a sock type filter.

Q. Would these all be classified as a strainer that you mentioned? A. No.

Q. What would be the strainer?

(Deposition of N. A. Cross.)

A. The strainer, the one I call the strainer strains the oil coming out of the engine into the day tank.

Q. Where is that located on Exhibit O?

A. (Witness indicates on Exhibit O.)

Q. You are referring to, "L O strainer" on figure A of Exhibit O, is that correct?

A. That is correct.

Mr. Howard: It is so marked.

Mr. Hokanson: It was originally marked by Mr. Newell. [890]

Mr. Howard: Right.

Q. (By Mr. Hokanson): What is the principle of that strainer, how does it function?

A. It cleans the oil. The oil goes through it, collects the dirt on the outside of a basket type strainer.

Q. Did you examine it at Long Beach?

A. I am sure I did. I don't recall right offhand. All the oil piping and oil system was washed out there and taken apart for that matter.

Q. Did you examine it at Manzanillo?

A. I did.

Q. Had it been cleaned?

A. It had been cleaned already.

Q. And was it clean?

A. It was clean.

Q. Are there any other purifying systems on the lubricating oil of that engine other than what you have already described?

(Deposition of N. A. Cross.)

A. Not that I can recall.

Q. Now, is the oil pump that circulates this lubricating oil engine driven? A. It is.

Q. How is the pressure controlled?

A. By a pressure regulating valve.

Q. What is the rated pressure for it?

A. The book calls for fifteen to twenty-five pounds.

Q. Referring to the lubricating oil cooler, what is the sea water operating pressure range in the lubricating oil cooler?

A. In regards to just using the pump on the engine?

Q. The engine pump, yes.

A. Seven to eight pounds.

Q. Did you examine the lubricating oil cooler at Long Beach? A. I did.

Q. When it was removed first from the engine?

A. That is correct.

Q. Were you present when it was removed?

A. I was.

Q. Did you move the flanges on the salt water side? A. I did.

Q. And looked into the cooler and found some scaling? A. That is correct.

Q. Did you look on the lubricating oil side?

A. I did.

Q. What did you find?

A. The lubricating oil had been going through there.

Q. Was it clean?

(Deposition of N. A. Cross.)

A. If I recollect, it was.

Q. You mentioned that the lubricating oil cooler functioned well after you left Los Angeles, that is, after November 11th until your arrival at Manzanillo? A. That is correct.

Q. What inspection did you make to determine that to be the cause?

A. The oil was clean, no water in it.

Q. You inspected the oil? A. Yes, I did.

Q. And on that basis you assumed that the cooler was functioning properly?

A. That is right.

Q. Did you make any inspection of the lubricating oil cooler [892] after you shoved off from Manzanillo for Los Angeles?

A. I did not, only to the extent that the lubricating oil was cool enough.

Q. So that so far as you know it functioned as well on the way from Manzanillo to Los Angeles as it did after you left Los Angeles on your return trip?

A. No, I found water in the oil afterwards which was attributed to the fact that it was coming from the oil cooler."

Mr. Hokanson: I move to strike that as not responsive, the answer to the question at the bottom of page 66.

The Court: I do not see that it is not responsive. It is explanatory. The objection is overruled.

(Deposition of N. A. Cross.)

"Q. Removing that assumption, Mr. Cross, and based on your own knowledge of what the oil temperatures were, the cooler functioned roughly the same on the trip from Manzanillo to Los Angeles as on its return trip, didn't it?

A. The oil cooler did, yes.

Q. Do you know why the engine was running hot? A. Do I know why?

Q. I want to know if you know.

A. Definitely? [893]

Q. Yes.

A. No, not for sure, nothing can be sure around Diesel engines.

Q. Would it be normal for the exhaust temperature on one cylinder to be as much as a hundred degrees more or less than the average temperature on the others on this type of engine?

A. It is a condition we find quite often. It is not advisable to run it at that much difference."

Mr. Howard: That is objected to as being beyond the scope of direct examination and proper cross examination, this line of questioning, nothing at all in the direct examination about exhaust temperatures.

Mr. Hokanson: This witness has testified he found the engine running hot. I think this is very pertinent to that particular subject, which was opened up on direct examination.

Mr. Howard: Touching on that, I will withdraw the objection.

(Deposition of N. A. Cross.)

"Q. Why not?

A. It should be balanced out to within approximately forty degrees. [894]

Q. Can a competent engineer usually take care of that difference? A. Oh, yes.

Q. What is your opinion as to the reason this engine was running hot? A. When?

Q. When you left Manzanillo on November 4th, let us say. A. I couldn't say for sure.

Q. Isn't it true, Mr. Cross, that a safety factor is built into a lubricating oil cooler in this respect, that the lubricating oil pressure is higher than the salt water pressure?

A. It is not built into the cooler, no.

Q. I mean it so operates, doesn't it?

A. That is the normal operating procedure, yes.

Q. And if your pressure on the salt water side is less than on the lubricating oil side, you can't possibly get water into the oil, isn't that true, through that means?

A. I wouldn't say it was impossible, but not very likely.

Q. Assuming that there were leaks in the cooler and that the oil pressure is higher than the salt water pressure, could you get salt water into the oil?

A. It is possible, it is not very likely.

Q. Why is it possible?

A. That I don't know. I can't explain lots of things.

(Deposition of N. A. Cross.)

Q. When you went aboard the Urania at Manxanillo and had [895] effected her repairs to the gears, was her destination then fixed from that point?

Q. (By Mr. Howard): If you know?

A. Will you repeat that question?

(Question read by reporter.)

A. As far as my orders read they were. I don't know for sure. My orders read to go to Manzanillo, install the gears, come back to Los Angeles with the vessel.

Q. Did you give any instructions to the master concerning where you were going?

A. No, I did not. You are talking about the captain of the vessel?

Q. Yes. A. No.

Q. In other words, it had already been established that she was returning to Los Angeles as far as you know?

A. When I left the shop it was, yes.

Q. Well, wasn't the vessel after you installed the new gears in good enough condition to proceed on her voyage to Panama?

A. The orders when I left Oakland were to return to Los Angeles with the Urania.

Q. If you felt that the gear installation was sufficient to bring that vessel 1200 miles back to Los Angeles, do you think she was in good enough condition to go 1700 miles to Panama? [896]

A. I believed at that time yes, except that it didn't maneuver properly even yet.

(Deposition of N. A. Cross.)

Q. And what do you mean by maneuver?

A. Starting and stopping, reversing, the air tubing, the condition of the air tubing had not been straightened out yet, and of course, it could have got to Panama. When it got to Panama something would have had to be done. It would have to have some work done on it.

Q. On the air tubing? A. Yes.

Q. On this engine, can you operate it ahead and then astern without bringing the engine to a stop?

A. No.

Q. With respect to the standby pump that we have discussed, is that an emergency hookup on the Urania?

A. The standby fire pump you are talking about?

Q. Yes.

A. It is always connected into the engine, yes. It has a flange that can be reversed if I remember correctly. In fact, you could shut it off. It would be tied in but the water wouldn't go through, some sort of reversible flange affair.

Q. Is there a valve on the sea water outlet side of the cooler?

A. I don't follow the question here. Can you point it out here? (indicating)

Q. It is my assumption that sea water that flows through [897] the heat exchangers, flows out into the sea?

A. That is correct, it flows through the heat exchanger and out.

(Deposition of N. A. Cross.)

Q. Is there a valve on the outlet side?

A. You mean to keep the water from going overboard at all?

Q. That is right, to control the outlet.

A. No, not to my knowledge.

Q. It flows freely through?

A. Yes, that is correct.

Q. Is there a gauge on the water pressure side of those heat exchangers to show the pressure?

A. The pressure of the water?

Q. Yes. A. Yes.

Q. Is there a gauge on the oil side as well of the cooler, the lubricating oil cooler?

A. Yes.

Q. Did you check those pressures?

A. Yes, that would be normal operating procedure.

Q. Were the pressures within the rated pressures established in your manual?

A. At what time?

Q. Prior to November 4th?

A. Yes, I think they were.

Q. Did you check them after November 4th?

Mr. Howard: At what time?

A. You mean——?

Q. (By Mr. Hokanson): After November 4th and prior to [898] your arrival in Los Angeles?

A. The engine was running so little I probably checked it. Any time you go by an engine in the engine room you look at the gauges. It is like

(Deposition of N. A. Cross.)

driving an automobile. I am sure I did, but I can't recollect it right now.

Q. Is there a temperature gauge on the heat exchanger to show the temperature on the water side?

A. It is not directly on the heat exchanger. You could tell how hot the water is going through the heat exchanger and how hot the oil is after it has gone through. It is not directly connected there, but it is in the same lines.

Q. And those temperatures are checked along with other gauges and instruments on the engine, aren't they, in normal operating practice?

A. That is right.

Q. And they should be logged, shouldn't they?

A. That is up to the engineer. It is up to the company you work for. Certain vessels don't even keep a log. It is something that I don't have any control over or have anything to do with. I don't log any of it myself on a vessel.

Mr. Hokanson: You may examine the witness.

Redirect Examination

Q. (By Mr. Howard): Do you know whether another sample of oil was actually obtained from the Urania engine after arrival at Long Beach?

A. Yes, there was.

Q. Who obtained that? [899]

A. I couldn't say exactly who obtained it.

Q. Were you present when it was obtained?

A. Undoubtedly, yes.

(Deposition of N. A. Cross.)

Q. Where was the sample obtained from?

A. From the engine itself. I couldn't say exactly whether we took it out of the bed or out of the oil line or—you are speaking of which one? There were several samples taken.

Q. The one that you had an analysis made of, where was that?

A. I believe it was——

Mr. Hokanson: I object to the question on the ground it is leading and involving an assumption here that hasn't been established as a fact."

Mr. Hokanson: I object on the ground it involves an assumption that hasn't been established; namely, that he made an analysis of the oil, your Honor.

Mr. Howard: In so far as the assumption would indicate that the witness had an analysis made of the oil, that is probably a proper objection, but the witness has stated he recalls a sample was obtained for an analysis.

The Court: He does not testify to the analysis, does he?

Mr. Howard: No, your Honor, he doesn't [900]

The Court: The objection is overruled.

"A. No, I don't know for sure exactly where it came from, somewhere in the engine oil sump.

Q. Were any other samples obtained of the oil?

A. Yes, several were taken.

Q. By whom?

(Deposition of N. A. Cross.)

A. By Mr. Newell and myself.

Q. Where were those obtained from?

A. Taken from the lower part of the sump in the main engine, and the lower part of the camshaft housing.

Q. What was done with those samples?

A. Just sampled by taste, feel, by finger.

Q. Did you taste it?

A. Yes, sir, I did.

Q. What did the taste disclose?"

Mr. Hokanson: That is objected to as involving a conclusion of the witness, who is not competent to answer.

The Court: Overruled.

"A. It appeared to be salt water. [901]

Q. (By Mr. Howard): Did you preserve any of those sample, Mr. Cross?

A. No, I did not.

Q. Who was present when they were taken?

A. Which samples are you talking about?

Q. The ones that you referred to that were taken by you and Mr. Newell?

A. Mr. Firth, Mr. Pike, Mr. Newell. Mr. Antippas might have been there. That is all I can recall. The engineer might have been there. I couldn't recall that for sure either.

Q. Was there any evidence of any part being dropped into the gears when you inspected the engine after the second breakdown?

A. No, none.

(Deposition of N. A. Cross.)

Q. After you had checked the alignment of the vertical shaft by chucking it in the lathe at Manzanillo, did you reach any conclusion as to whether the condition of that shaft had any bearing on the galling of the gears?

Mr. Hokanson: I object to the form of the question as involving the conclusion of the witness."

Mr. Howard: He has already testified on that subject on cross-examination.

The Court: The objection is overruled.

Mr. Hokanson: It is his witness, Your Honor.

The Court: I think the ruling of the Court is proper. It will stand.

"A. It was my opinion that they had not had anything to do—the bend had been done after the engine gears had gone out because of the fact of the location of the bend. The bend was in such a place that if it was in the engine it would have still run true. It is very hard to describe this bend exactly. You should see it or have it pointed out to you on another engine.

Q. After the vertical shaft was reinstalled in the engine with the replacement gears, did you encounter any difficulty in getting those gears to mesh properly?

A. I did not. They went back in their original places on the dowels. I checked them. They were in very nice alignment.

Q. These gears that were put into the engine at Manzanillo were taken there by you, is that correct?

(Deposition of N. A. Cross.)

A. That is correct.

Q. Did they come out of—where did you obtain them?

A. I obtained them from the stockroom of our company.

Q. Did you inspect those gears before the installation to determine whether they were in good condition?

A. I gave them my own visual inspection to be sure there were no burrs. The heat treating company had them checked. [903] for hardness before I left Oakland for Manzanillo.

Q. And what did that visual check determine?

A. They were in very good shape.

Q. Now, as to the gears that were put in the engine at Long Beach, were they the same type of gears? A. The same type.

Q. Had they been specially treated in any way?

A. Not to my knowledge.

Q. Did you make any suggestion one way or the other to the chief engineer as to the use of the standby pump after the difficulty was reported to you at four a.m. on November 5th?

* * *

A. I don't believe I did after the trouble. After they had the trouble with the gears there was no necessity of doing it. The engine was running so slow there was no trouble at all keeping it cool.

Q. Prior to that time had you made any sug-

(Deposition of N. A. Cross.)

gestion to the chief engineer about the standby fire pump being employed?

A. I believe I did, but I can't be certain of it.

Q. What is your recollection as to the suggestion that [904] was made?

* * *

A. I believe I recommended it not be used.

Q. (By Mr. Howard): What would be the basis of that, Mr. Cross?

A. It is not a good idea to overcome your pressures. There are times when it has to be done. I don't like to do it when the regular pump is fully capable of maintaining the pressures and temperatures that were recommended by the factory without the use of auxiliary equipment.

Q. Mr. Cross, state what you observed as to the efficiency of the operation of the lubricating oil cooler on the portion of the voyage between Manzanillo and Long Beach when the main engine was operated?

Mr. Hokanson: Will you read the question?

(Question read by reporter.)

Mr. Hokanson: I object to the question on the ground that it has already been gone into on direct examination and cross-examination."

The Court: Overruled. [905]

"A. The lubricating oil cooler never gave any trouble at any time as to the efficiency of cooling the lubricating oil.

Mr. Howard: That is all.

Mr. Hokanson: No further questions.

Mr. Howard: Is it stipulated that this deposition need not be read, corrected or signed by the witness, but may be used by either party at the trial with the same effect as though it had been signed?

Mr. Hokanson: So stipulated."

Mr. Howard: This concludes the deposition of Mr. Cross, which I offer in evidence, Your Honor. It was stipulated by counsel that the reading and signing of the deposition by the witness could be waived.

The Court: This deposition is received as a part of cross-libelant's case in chief.

Mr. Howard: I offer the exhibit we have pending, if the Court please, A-17.

The Court: This witness spoke of parts which were not used either at Manzanillo or at Long Beach.

Mr. Howard: I am willing to omit those parts, but it is impossible to take them out of other pages where parts should remain in.

The Court: Can you identify them? [906]

Mr. Howard: Yes, Your Honor.

The Court: Do you agree they can be identified?

Mr. Hokanson: By examination of the deposition, Your Honor, perhaps we can get together.

The Court: After you do that, I will consider it further.

Court is adjourned until tomorrow morning at 10:00 o'clock.

(At 4:04 o'clock p.m., Tuesday, April 12, 1949, proceedings adjourned until 10:00 o'clock a.m. Wednesday, April 13, 1949.)

April 13, 1949, 10:00 o'clock, a.m.

Mr. Howard: We will proceed with the deposition of Mr. George Vernon Roark, page 3 of the large volume of depositions.

The Court: Unless there is something that counsel should mention about what was said there, I would turn to page 4. [907]

Mr. Howard: Line 7, page 4.

DEPOSITION OF GEORGE V. ROARK

By Mr. Howard:

"Q. Will you state your full name and your residence, please?

A. You wish my home address?

Q. Yes, please.

A. My name is George Vernon Roark. I live at 2850 Leeward Avenue, Los Angeles, California.

Q. And by whom are you employed and in what capacity, Mr. Roark?

A. By the Texas Oil Company as a senior engineer in the technical and research division of the refining laboratory.

Q. How long have you been employed by the Texas Oil Company?

A. For about nineteen years and nine months.

Q. Mr. Roark, do you expect to be in Seattle, Washington, on or about April 6, 1949?

(Deposition of George V. Roark.)

A. No, sir, I do not."

Mr. Howard: The witness did agree to the waiving of the reading and signing of the deposition. We can begin on line 14, page 5. [908]

"Q. Mr. Roark, in the course of your services for the Texas Oil Company, did you have occasion from time to time to supervise analysis and report on the technical contents of the analysis of samples of lubricating oil taken from various sources?

A. We actually do not supervise them.

Q. Well, what, if any, relation do you have to such an operation for the Texas Oil Company?

A. With respect to samples, my normal activity is to take a report issued by the laboratory and transmit it to the sales department, with comments which I feel are appropriate.

Q. Do you actually participate in the analysis of samples that are submitted to the company for technical analysis? A. No, sir.

Q. Where is such analysis done in this area, if you know?

A. Normally they are done at our laboratory at the refinery at Wilmington.

Q. And are such samples analyzed frequently?

A. Yes.

Q. And is the analysis performed by the employees of the Texas Oil Company? A. Yes.

Q. What type of report is issued after such an analysis has been made of a sample of oil?

(Deposition of George V. Roark.)

A. I don't understand exactly just what you have in mind.

Q. Well, you have mentioned that a report is issued by the laboratory and it is received by you and then sent to the sales departments with comments that you might make on it.

A. Yes, that is right.

Mr. Howard: I will ask the reporter to mark this document for identification.

(The document in question was marked by the reporter as 'Claimant's and Cross-Libelant's Exhibit S for Identification.')"

(Laboratory test report marked Respondent's Exhibit A-20 for Identification.)

"Q. I hand you what has been marked for identification by the reporter as Claimant's and Cross-Libelant's Exhibit S for Identification (handing document to the witness), and I will ask you to state whether or not that represents the usual form of report issued by the Texas Company on samples of oil that are submitted to the company for analysis.

A. This is typical of the reports issued from our offices to other personnel in the Texas Company.

Q. Would that be the type of report that you have previously mentioned as having been sent to the sales department? A. Yes.

Q. Now, what is the source of the information

(Deposition of George V. Roark.)

that is used in compiling such a report—source or sources?

A. Well, by test—that is, the results of tests appearing on these reports are transmitted to our offices from the laboratory.

Q. And the laboratory you speak of is at Wilmington, California? A. Yes.

Q. And these reports are made in the usual course of business? A. That is right.

Q. By your office? A. That is right.

Q. And do you have occasion to make them frequently? A. Yes, sir.

Q. Again calling your attention to the exhibit previously identified, did you yourself participate in the laboratory analysis made of the sample of lubricating oil described therein?

A. No, I actually did not analyze the sample.

Q. Did you receive reports from our Wilmington laboratory as to the analysis of samples made in that case? A. Yes.

Q. Was the report now represented as Claimant's and Cross-Libelant's Exhibit S prepared from such reports?

A. This appears to be a report that I prepared and then signed.

Q. Referring again to this exhibit, Mr. Roark, will you state what is indicated as the source of the oil sample that was analyzed?

The Witness: May I have that again, please?

(Deposition of George V. Roark.)

(The pending question was read by the reporter.)

(No answer by the witness.)

Q. Does the report show where the oil was taken from?

A. The report indicates information supplied to me to the effect that the sample was taken on November 11——

Q. Of what year?

A. 1948—from the bottom of the engine in the vessel indicated in the report.

Q. The various items of analysis as shown in the body of the report—was the information for that obtained from the Wilmington laboratory?

A. Yes, sir.

Q. And from what source did you obtain the information that is used in the comments at the bottom of the report in [912] this exhibit"?

Mr. Hokanson: At this time I lodge an objection covering the testimony of the witness as to this document, and comments, when he has testified that he did not make the analysis himself; it was based upon reports that he received. Comments relating to the vessel and things of that character are beyond his personal knowledge, and therefore certainly should not be admissible.

The Court: The question is, has he proved that this was done in the ordinary course of business, as

(Deposition of George V. Roark.)

he does ordinarily? What do you think about that question, Mr. Hokanson?

Mr. Hokanson: I think it has been established that in the ordinary course of business they make up certain reports, but this witness is not certain. He says this appears to be a report that was prepared and then signed. He has no further knowledge than that.

Mr. Howard: If the Court please, the witness has testified that this report was made in the normal course of business, one of many reports of this type that are made. He has identified the source of the information contained in the reports. I submit this is analogous to the situation where a doctor makes a [913] report based on blood tests or X-rays or things of that nature, where he may not have actually conducted the test or taken the X-ray himself.

The Court: Do you contend it has been established by this witness that a part of his business is to receive from the laboratory department of his own company such reports as this and to transmit them to the sales department, and that in line with that he has done this thing with respect to this particular exhibit?

Mr. Howard: Yes, Your Honor. First he testified on page 5, line 22 to that effect, and subsequently on page 6 he identifies the source of this information within his own company.

The Court: The Court is of the opinion that the testimony of this witness is to the effect con-

(Deposition of George V. Roark.)

tended by respondent as to what this witness ordinarily does as to whether or not this exhibit was issued and distributed by this witness for his company in the ordinary course of the company's business.

The objection is overruled.

"A. The comments were based upon the analysis plus information which I had previously been given on the source [914] of the samples."

Mr. Hokanson: One further objection for the record. Comments made upon information given by other persons are clearly hearsay, and I don't see how that——

The Court: What other persons? Do you mean outside of his company personnel?

Mr. Hokanson: I think the evidence will show that the information must necessarily have come from outside personnel of the company.

The Court: Mr. Howard, do you wish to respond to that comment?

Mr. Howard: Only to the effect that counsel has cross-examined the witness on that point. If it is true, it will be brought out on the cross-examination. The source of his comments is later examined into by libelants' counsel.

(Deposition of George V. Roark.)

The Court: Temporarily I am going to sustain the objection to the first sentence in the body of this report reading as follows: "The above sample represents oil scooped from bottom of the crank chamber and probably was contaminated by accumulation of rust brought about by water leaking into the oil system."

If it turns out that he in the ordinary course of business made or had made by someone in his company's [915] employ an investigation as to that information contained in that statement, I will reconsider the ruling as to that.

Mr. Howard: Your Honor, I would like to offer the exhibit at this time subject to that.

The Court: Is there anything further you wish to state now that the offer has been made?

Mr. Hokanson: My previous objections to the offer only, Your Honor.

The Court: The objection is overruled, with the exception in respect to which the Court has sustained as to that one sentence, the objection to that one sentence being sustained and that one sentence will not be considered by the Court. The exhibit in all other respects is admitted in evidence.

(Deposition of George V. Roark.)

RESPONDENT'S EXHIBIT A-20

The Texas Company Laboratory Test Report

Los Angeles, California

November 15, 1948

Customer: Compania Naviera Limitida M/V Urania.

Address: Panama.

Sample No.: D-193934.

Sample of Ursa Oil X-30**, Used. Date Secured: 11/11/48.

Taken from Union Model V-6, 560 h.p. 6 cyl. Diesel.

Point in system at which sample taken: Crank-chamber.

Hours Oil in Service: 1.

Appearance	Opaque, Dark green
Odor	Used
Water, %	1.4
Gravity, °API	25.5
Flash, COC, °F.	420
Fire, COC, °F.	490
Viscosity, Univ. (seconds) at 100°F.	545
Neutralization No. (Oxalate)	0.10
Foreign Mineral Matter, %	0.46*

* Principally iron oxide.

The above sample represents oil scooped from bottom of the crank chamber and probably was contaminated by an accumulation of rust brought about by water leaking into the oil system. Except for

(Deposition of George V. Roark.)

appearance, odor, water and foreign mineral matter the sample gave test results conforming to those of unused Ursa Oil X-30**.

/s/ C. E. EMMON,
Technologist.

GVR-BH

Admitted April 13, 1949.

"Q. But I understand that you did not actually examine the sample itself?

A. That is correct.

Mr. Howard: You may cross-examine.

Cross-Examination

By Mr. Hokanson:

Q. Do you know, Mr. Roark, who reported the facts upon which this report was issued—do you know that? [916]

A. In this case I do not know, but it is normally reported to me by Mr. Hoag of the laboratory.

Q. You wouldn't remember who gave you the report in this case?

A. No, sir; the results were telephoned—the results may have been telephoned by some other person at the laboratory.

Q. Is this a telephonic report that you received?

A. Yes.

Q. Do you know when you received it?

A. No.

(Deposition of George V. Roark.)

Q. Do you know where the oil was obtained, of your own knowledge?

A. Not of my own knowledge, no, sir.

Q. It was reported to you over the telephone by a person unknown except that you would testify that it was an employee of the company?

A. Yes; it was one of our regular sources of information.

I would like to add to that statement, namely, that telephoned reports are confirmed in the normal course of events by a written report. I do not recall whether I received this written form before or after this report, which is dated November 15, 1948, was compiled.

Q. The comments that you enclosed on Claimant's and Libelant's Exhibit S for identification, those comments are [917] strictly hearsay, are they not, as far as you are concerned, are they not?

Mr. Howard: I will object to that question as to whether or not the comment was hearsay. That is a matter involving legal interpretations."

Mr. Howard: I object to that question as calling for a conclusion of the witness.

Mr. Hokanson: The question has been rephrased at the top of page 11, line 4.

"Q. The comment that you make assumes certain facts; is that correct, Mr. Roark?

(Deposition of George V. Roark.)

A. Yes, by comments were made on information supplied from the laboratory and also upon information that I received with reference to the source, the identity of the sample and the conditions under which it was taken.

Q. Well, were all of those facts communicated to you by someone in your laboratory or were other persons involved in communicating this information to you?

A. Samples are not collected by laboratory personnel. This particular sample was collected by one of the employee in the marine department. [918]

Q. Do you remember his name?

A. Yes; it was Don Mackey.

Q. And do you remember that he gave you some of the information upon which you based your assumption for purposes of this comment?

A. Yes, I issued a report indicating the source of the sample and the date it was taken.

Q. So that the comment that you make here is a conclusion that you have drawn based upon information that some other person or persons supplied to you? A. Yes.

Mr. Hokanson: That is all.

Redirect Examination

By Mr. Howard:

Q. Mr. Roark, it is customary for you to receive such reports from the laboratory in the usual course of business, is it not''?

(Deposition of George V. Roark.)

Mr. Hokanson: That is objected to as improper redirect examination, has already been covered by direct examination.

The Court: The objection is overruled.

"A. Yes, sir, that is right. [919]

Q. It is a routine matter, is it? A. Yes.

Q. It happens frequently? A. Yes.

Mr. Hokanson: I shall object to the last question and also to the answer thereto on the ground that the term "frequently" is so vague that it does not establish anything that would form the basis for an opinion——

Mr. Howard: I will restate the question.

Q. How frequently do you receive such reports in the normal course of events?

A. Very considerably. I believe that samples from ships and other sources run from about 12 to 36 samples per week.

Q. And that is a standard operating procedure in your company to obtain the information from that source"?

Mr. Hokanson: Again, it is repetitious, Your Honor. I move it be stricken.

The Court: The objection is overruled.

(Deposition of George V. Roark.)

"A. Oh, yes.

Q. And then you issue the report on the basis of that [920] information? A. Oh, yes.

Q. Do you have with you this morning, Mr. Roark, a copy of the report that you have mentioned as having been issued by Mr. Don Mackey?

A. Yes, sir.

Q. Could we examine that, please?

A. Yes (handing document to counsel). Pardon me, I thought that was it—I thought I had the report, but apparenlty I do not.

Q. You wouldn't have it with you, then?

A. Apparently not.

Q. For how long have you been issuing such reports in your position as senior engineer in the technical and research division of the Texas Oil Company at Los Angeles?

A. I have been doing this type of work for approximately 12 years, although I have not had the rating of senior engineer all that time.

Mr. Hokanson: I shall object to the question on the ground that it is repetitous, having been asked in the original direct examination.

Mr. Howard: That is all, Mr. Roark.

Mr. Hokanson: I have no further questions.

Mr. Howard: Thank you very much, Mr. Roark; you are excused now." [921]

Mr. Howard: That concludes the deposition of this witness.

The Court: What became of the matter to which objection has been stated on line 19?

Mr. Hokanson: Apparently it was not pursued further.

Mr. Howard: At this time I would like to offer this deposition in evidence and ask the Court to rule again as to the admissibility of the document with respect to the first sentence in view of the subsequent testimony of the witness as to the source of his information within the company.

The Court: I have some doubt about it. It can be done any time in the future. I will have to consider it further. I think I should have some authority on this. I cannot see how you would be prejudiced by the Court's not finally ruling upon it at this moment instead of some later time.

Mr. Howard: I am agreeable, Your Honor.

The Court: I will consider it later. I think you should give me some authority on this. Both sides would be invited to furnish the Court some authority respecting your position in the matter.

Mr. Howard: That concludes that deposition.

The Court: That deposition is received as a part of cross libelant's case in chief. [922]

Mr. Howard: I would like to now read the deposition of Mr. M. L. Newell, beginning on page 136.
